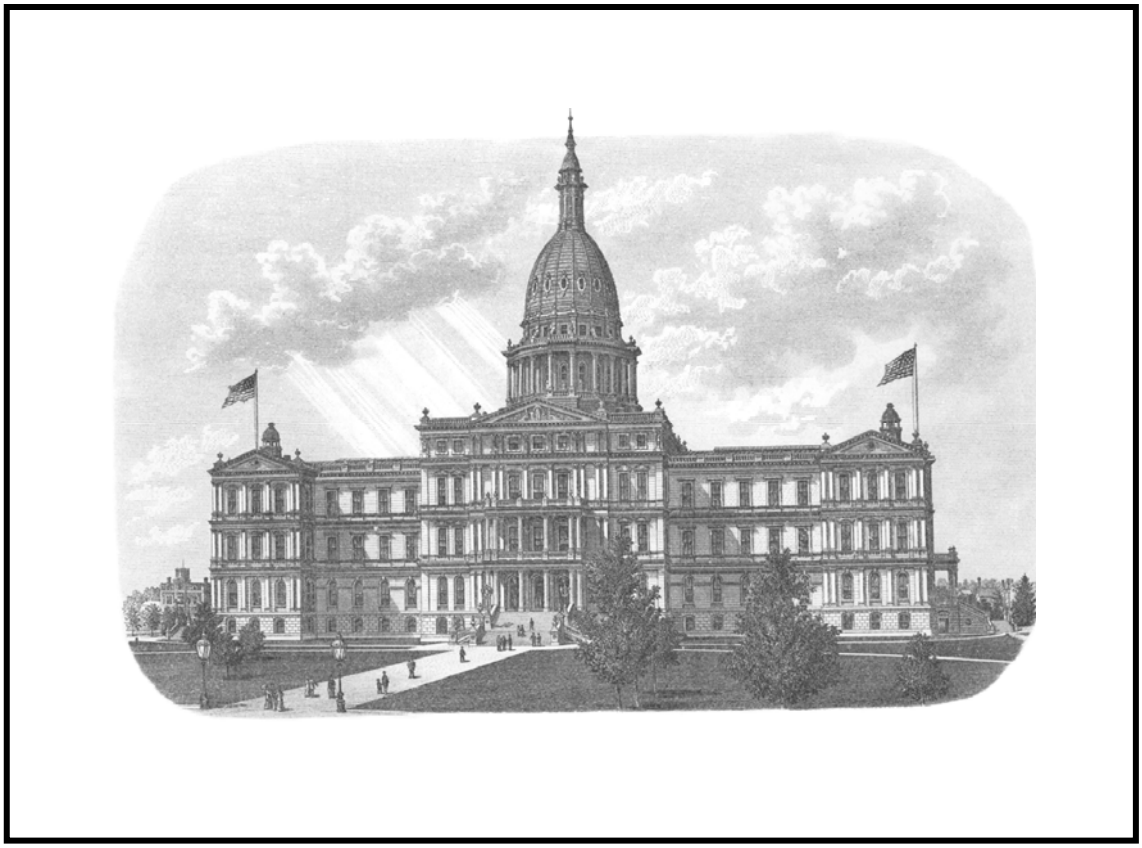
Michigan Register

Issue No. 9 – 2013 (Published June 1, 2013)



GRAPHIC IMAGES IN THE

MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws

Issue No. 9— 2013
(This issue, published June 1, 2013, contains
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Rick Snyder, Governor

Brian Calley, Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Office of Regulatory Reform publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.

Sec. 8.

(1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

4.1203 Michigan register fund; creation; administration; expenditures; disposition of money received from sale of Michigan register and amounts paid by state agencies; use of fund; price of Michigan register; availability of text on internet; copyright or other proprietary interest; fee prohibited; definition.

Sec. 203.

(1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs of preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of the Michigan register at a price determined by the office of regulatory reform not to exceed the cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the Office of Regulatory Reinvention for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The Office of Regulatory Reinvention is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Office of Regulatory Reinvention, Romney Building – Fourth Floor, 111 S. Capitol Avenue, Lansing, MI 48933

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: Office of Regulatory Reinvention, Romney Building – Fourth Floor, 111 S. Capitol Avenue, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the Office of Regulatory Reinvention (517) 335-8658.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the Office of Regulatory Reinvention: www.michigan.gov/orr.

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the Office of Regulatory Reinvention Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Steve Arwood, Director
Office of Regulatory Reinvention

2013 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2013	February 1, 2013
2	February 1, 2013	February 15, 2013
3	February 15, 2013	March 1, 2013
4	March 1, 2013	March 15, 2013
5	March 15, 2013	April 1, 2013
6	April 1, 2013	April 15, 2013
7	April 15, 2013	May 1, 2013
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19	October 15, 2013	November 1, 2013
20	November 1, 2013	November 15, 2013
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BILLS SIGNED INTO LAW OR VETOED

ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reinvention shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state."

ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

WORKERS' COMPENSATION AGENCY

GENERAL RULES

Filed with the Secretary of State on May 13, 2013

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45(a)(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the workers' compensation agency by section 205 of 1969 PA 317, MCL 418.205; section 48 of 1969 PA 306, MCL 24.248; and Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, and 2003-1, MCL 445.2001, 418.3, 445.2004, and 445.2011)

R 408.43b and R 408.43i of the Michigan Administrative Code are amended as follows:

PART 3. INSURANCE

R 408.43b Employer individual self-insurer; compliance with bureau requirements; notice; additional time; certification; renewal application.

Rule 13b. (1) If the agency approves an initial application of an employer to be an individual self-insurer, then the approval shall be in writing. The approval letter shall contain the excess liability insurance terms, bond, letter of credit, and guaranties required by the agency as a condition of the self-insured authority. The employer has 30 days from the receipt of the agency’s notice in which to comply with the requirements of the agency. The self-insured authority shall not become effective until the agency has received proof that all requirements of the agency for self- insured authority have been met.

(2) The employer may, at the discretion of the agency, be granted additional time to meet the requirements for the self-insured authority. An employer shall make a request for an extension of time in writing within the 30-day compliance period. If the agency does not receive proof that all requirements for the self-insured authority have been met within the time prescribed, then the application shall be considered withdrawn.

(3) The agency will issue a letter certifying self-insured authority to the employer when the employer meets the requirements of the agency. The self-insured authority for all approved employers expires on the designated renewal date, which shall not be more than 12 months from the effective date of the authority. A self-insured employer shall submit a renewal application (form 402R) and requested documents, including a current financial statement and loss information, to the agency 30 days before the expiration of the self-insured authority. Upon receipt of a renewal application, the authority shall be extended until denied or approved for an additional 12 months.

R 408.43i Group self-insurer's fund; board of trustees' power and duties; investment restrictions.

Rule 13i. To ensure the financial stability of each group self-insurers' fund, a board of trustees

September 14, 2012
of each fund shall be responsible for all operations of the fund. A board of trustees shall be a group of members elected by the membership of the fund for stated terms of office. The majority of the trustees shall be owners or employees of members of the self-insurers' fund, but a trustee shall not be an owner, officer, or employee of a service company. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate a trustee as administrator or, in the alternative, hire an employee or designate an individual to act as the group fund administrator. The trustees may delegate to the administrator the duties they determine proper. The duties may include, but are not limited to, advising the board with regard to any of the following:

(i) Contracting with a service company.

(ii) Determining the premium charged.

(iii) Investing surplus monies, subject to the restrictions set forth in this rule.

(iv) Accepting applications for membership. However, the board of trustees remains the responsible party for the operation of the fund. The duties delegated to the administrator and all compensation to be paid to the administrator shall be reduced to writing, and a copy shall be provided to the agency with each annual group renewal application. The group fund administrator shall not be an owner, officer, or employee of a service company. The trustees shall purchase a fidelity policy covering the fund trustees, administrator, employees of the fund, and the service company in an amount sufficient to protect the assets of the fund. A copy of the fidelity policy will be provided to the agency with each annual renewal.

(b) Limit disbursements to payment and expenses of handling claims and administrative expenses necessary for operating the fund. The board of trustees shall also establish necessary accounts and accounting procedures for control and accurate financial reporting. Established accounting procedures shall provide accurate financial information for each open year individually with respect to revenue and expense until the year is closed out. The board of trustees shall maintain, and be responsible for, all records and documents relating to the formation and ongoing operation of the group self-insurance fund. If the board of trustees does not maintain the records in a responsible manner and in accordance with these rules, then the self-insured approval of the fund may be terminated by the director.

(c) Audit the accounts and records of the fund annually or at any time required by the agency. Audits shall be made by certified public accountants or by authorized representatives of the agency. The agency reserves the right to prescribe the type of audits to be made and the uniform accounting system to be used by the self-insurers' fund to enable the agency to determine the solvency of the group self-insurers' fund. Copies of financial audits prepared by certified public accountants shall be filed with the agency in Lansing within 180 days after the close of the fund year. Claim reserve audits used in support of surplus distribution requests shall be performed by auditors who meet the requirements of the agency relating to independence, report content, and timing.

(d) Not extend credit to individual members for payment of premium.

(e) Apply a penalty rate in excess of the normal premium to any risk that has unfavorable loss experience, if the member and the agency are notified in writing before the effective date of the change in rates.

(f) Not utilize any of the monies collected as premiums for any purpose unrelated to workers' compensation. Further, the board of trustees shall not borrow any monies from the fund or in the name of the fund without advising the agency of the nature and purpose of the loan and obtaining agency approval. The board of trustees may, at its discretion, invest any surplus monies not needed for immediate cash needs, but the investments shall be limited to United States government bonds, United States treasury notes, United States government agency
issues, United States government-sponsored enterprises, investment share accounts in any savings and loan association and credit unions that have their deposits insured by a federal agency, and certificates

of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations, credit unions, and commercial banks shall be limited to institutions in this state and shall not exceed the federally insured amount in any 1 account, except that the federally insured amount in any 1 account in a commercial bank may be exceeded if the account amount involved does not exceed either of the following factors:

(i) Five percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in the state in the banking division annual report of the office of financial and insurance regulation.

(ii) Five hundred thousand dollars per institution. A group self-insurance fund shall not invest in mutual funds, except that investments in money market mutual funds of short-term duration which invest only in government agency issues, government-sponsored enterprises, and government bills, bonds, and notes will be allowed for short-term cash investment needs. As used in this paragraph, "short-term duration" means 180 days or less.

(g) The board of trustees of a group self-insurance fund, subject to the limitations set forth in subdivisions (h), (i), and (j) of this subrule, may, in its discretion, and upon contracting with a bank trust department or with a professional investment advisor registered with the securities and exchange commission under the investment advisors act of 1940, 15 U.S.C. '80B-3, invest monies not needed for immediate cash needs in corporate bonds and municipal bonds and common and preferred stock.

(h) Limit the combined holdings of corporate and municipal bonds to not more than 45% of the market value of the available investment portfolio. Corporate and municipal bonds must be (A) rated or better by at least 2 nationally recognized rating services. Holdings in any 1 corporation or municipality shall not be more than 5% of the total amount eligible for investment in corporate and municipal bonds as set forth in this subrule.

(i) Of the 45% of the market value of the investment portfolio available for investment in municipal or corporate bonds, 25% may be invested in common or preferred stocks. Common or preferred stocks shall be limited to publicly owned companies that trade on a United States regulated exchange. Mutual funds or bank pooled funds that invest in common or preferred stocks are permitted and shall be calculated as part of the percentage of market value available for investment in common and preferred stocks.

(j) Ensure that the professional investment advisor completes a compliance review of the investment portfolio on a quarterly basis. A copy of the investment review shall be provided to the fund and the agency within 30 days of the close of each quarter. The annual financial statements shall be audited by a certified public accountant and shall include a certification as to whether the fund has been in compliance with the requirements for investments. Failure to report on investments as required by this rule may result in withdrawal of the authority to invest in corporate and municipal bonds and/or common and preferred stocks.

(k) Any group fund found to have investments in vehicles other than as provided by this rule shall be given 30 days or a time period approved by the director to divest themselves of the investments. Failure to meet the divestiture requirement may subject the fund to further sanction by the director.

ADMINISTRATIVE RULES

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

ENVIRONMENTAL STEWARDSHIP DIVISION

FARMLAND AND OPEN SPACE PRESERVATION

Filed with the Secretary of State on May 13, 2013

These rules take effect immediately upon filing with the Secretary of State unless adopted under section 33, 34, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of agriculture and rural development by section 36116 of 1994 PA 451, MCL 324.36116)

R 554.701, R 554.723, R 554.731, R 554.733, R 554.734, R 554.736, R 554.737, R 554.741, R 554.742, R 554.743, R 554.744, and R 554.746 of the Michigan Administrative Code are amended, R 554.721, R 554.722, and 554.747 are rescinded, and R 554.750 and R 554.751 are added to the Code to read as follows:

PART 1. GENERAL PROVISIONS

R 554.701 Definitions.

Rule 1. (1) "Act" means 1994 PA 451, MCL 324.101 to 324.90106.

(2) "Department" means the department of agriculture and rural development.

(3) "Clerk" means the clerk of the local governing body or the person fulfilling the duties of the clerk.

(4) "Designated open space" means those open space lands as defined by section 36101(j)(i) of the act.

(5) "Gross annual income" means an average computed from 2 of the 3 tax years immediately preceding the year of application from the raising or harvesting of any agricultural commodities.

(6) "Has been devoted primarily to an agricultural use" means all land for which an application for a farmland development rights agreement has been filed shall have been under agricultural use, as defined in section 36101(b) of the act, for at least 1 year during the 36-month period immediately preceding filing the application.

(7) "Local open space" means those open space lands as defined by section 36101(j)(ii) of the act.

(8) "Specialty farm" means those enterprises of 15 or acres in size which meet the income requirements of section 36101(h)(iii) of the act, produce agricultural, horticultural or floricultural commodities or are engaged in the business of breeding or husbanding animals, rendering services**,** or yielding products customarily associated with agricultural operations.

(9) "State" means a major state department or agency thereof in agreement with the state land use agency.

(10) "Totally and permanently disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected

to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

PART 2. ELIGIBLE LANDS

R 554.721 Rescinded.

R 554.722 Rescinded.

R 554.723 Local open space development rights easement.

Rule 23 If an application for a local open space development rights easement is denied by the local governing body and is appealed to the state land use agency, the appeal may only be considered if the land covered by the application meets all of the following criteria:

(a) Is 15 acres or more in size.

(b) Does not contain any residential, commercial, or industrial structures.

(c) Is not operated as a commercial facility.

(d) Bears significant importance to the public interest of more than local concern as a valuable land resource.

PART 3. APPLICATION FOR DEVELOPMENT RIGHTS AGREEMENT OR EASEMENT

R 554.731 Application.

Rule 31. (1) The application shall be submitted to the clerk of the local governing body with the jurisdictional responsibility for the property cited in the application except that in those townships not having a duly adopted zoning ordinance pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 to 125.3702, the application shall be submitted to the clerk of the governing body of the county.

(2) The application shall contain a map which includes the following information:

(a) All significant natural features, including but not limited to swamps, bogs, marshes, lakes, ponds, rivers, streams, woodlots, known mineral deposits and formations and sand dunes.

(b) All physical improvements including but not limited to buildings, roads, feedlots**,** or any improvements under construction at the time of application.

(c) All acreage under active agricultural use by type of use.

(3) A copy of the most recent property tax assessment notice or tax bill shall accompany the application along with a statement by the applicant certifying the name of the owner of record, the legal description of the property and all liens, covenants**,** and other encumbrances affecting the title to the land.

R 554.733 Review.

Rule 33. (1) In reviewing an application for a farmland development rights agreement or a designated open space development rights easement, the local governing body shall consider first the ability of the land cited in the application to meet the eligibility requirements of the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. The local governing body may then take into consideration the following:

(a) The physical resource characteristics for agricultural or designated open space use.

(b) Any encumbrance on the property.

(c) The relationship of the property to the entire farm operation if the application is for only a portion of the farm operation.

(d) The percentage of the land cited in the application which actually meets the definition for farmland or designated open space.

(e) Any other criteria which the local governing body can demonstrate as being relevant to the application.

(2) In reviewing an application for a farmland development rights agreement or a designated open space development rights easement, the state land use agency shall reject an application only if it is in nonconformance with the eligibility requirements in the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. In reviewing an application on appeal for a farmland development rights agreement or a designated open space development rights easement, the state land use agency shall consider the ability of the land cited in the application to meet the eligibility requirements of the act, sections 324.36101(h) and (j)(i)(A) to (C) respectively. The state land use agency may then take into consideration the following:

(a) The physical resource characteristics for agricultural or designated open space use.

(b) Any encumbrance on the property.

(c) The relationship of the property to the entire farm operation if the application is for only a portion of the farm operation.

(d) The percentage of the land cited in the application which actually meets the definition for farmland or designated open space.

(e) Any other criteria which the local governing body has demonstrated as being relevant to the application.

(3) In reviewing an application for a local open space development rights easement, the local governing body shall first consider the ability of the land cited in the application to meet the eligibility requirements of the act, section 324.36101(j)(ii). The local governing body may then take into consideration the following:

(a) The physical resource characteristics for open space use.

(b) Any encumbrance on the property.

(c) The percentage of the land cited in the application which actually meets the definition for local open space.

(d) Any other criteria which the local governing body can demonstrate as being relevant to the application.

(4) In reviewing an application for a local open space development rights easement on appeal, the state land use agency shall consider the ability of the land cited in the application to meet the eligibility requirements of R 554.723.

R 554.734 Approval or rejection.

Rule 34. (1) Approval or rejection of an application shall be by vote of the local governing body.

(2) The vote may be taken at either a regularly scheduled meeting of the local governing body or a special meeting called for the purpose of acting on the application. In each case the applicant shall be notified in writing by the clerk at least 5 days before the meeting of the time and place of the meeting.

(3) The clerk shall certify the results and date of the vote on the application.

(4) Within 10 days of the date the vote was taken, the clerk shall notify the applicant of the local governing body's decision. If rejected, the local governing body shall provide the applicant with a written statement citing the reasons for rejection.

(5) A locally approved application for a farmland development rights agreement or for a designated open space development rights easement, together with supporting materials, shall be forwarded to the state land use agency within 10 days of the date of approval by the local governing body.

(6) A copy of a locally approved application for a local open space development rights easement, together with copies of the supporting materials, shall be forwarded to the state land use agency for informational purposes within 30 days of the date of approval by the local governing body.

(7) The 60-day review period as provided in sections 36104 and 36106 of the act begins with receipt of the application or appeal request by the state land use agency.

(8) The applicant shall be notified within 15 days of the date of approval or rejection by the state land use agency. If rejected, the state land use agency shall provide the applicant with a written statement citing the reasons for rejection.

(9) All open space development rights easement applications approved by the state land use agency shall be submitted to the legislature under the provisions of section 36105(3) of the act.

(10) Upon approval of a farmland development rights agreement by the state land use agency or designated open space development rights easement by the legislature, the applicant shall have 30 days from date of receipt of the agreement or easement to execute the agreement or easement unless an extension is granted in writing by the state land use agency.

(11) Upon approval of a local open space development rights easement by the local governing body, the applicant shall have 90 days from the date of receipt of the local open space development rights easement to execute the easement unless an extension is granted in writing by the local governing body.

R 554.736 Reapplication.

Rule 36. The 1-year waiting period for reapplication as provided in sections 36104 and 36106 of the act shall be from the date of notification of the last rejection permitted under the act, or if the applicant chooses not to appeal, from the date of expiration of the appeal period.

R 554.737 Assessments.

Rule 37. (1) A copy of the state tax commission appraisal under sections 36105 and 36106 of the act shall be transmitted to the local assessor for the basis of the first assessment for the land covered by a farmland development rights agreement or an open space development rights easement. Subsequent assessments shall be reviewed annually by the local assessor in the same manner as other real property assessments. A copy of the termination appraisal by the state tax commission shall be transmitted to the local assessor.

(2) Subsequent to the execution of a farmland development rights agreement, the local assessing officer shall specify the state equalized valuation and the ad valorem taxes levied on the description and shall forward such information to the state land use agency by February 15 of each year until the agreement is terminated.

(3) Subsequent to the approval of a local open space development rights easement application by the legislature and execution of the easement by the applicant, the local assessing officer shall specify the state equalized valuation of the description exclusive of open space development rights, the state equalized valuation of the open space development rights and the ad valorem taxes not paid on the open space development rights and shall forward such information to the state land use agency by February 15 of each year until the easement is terminated.

PART 4. TERMINATION OF A DEVELOPMENT RIGHTS AGREEMENT OR EASEMENT

R 554.741 Application.

Rule 41. (1) The application shall be made on forms prescribed by the department and shall contain all requested information.

(2) The application shall be submitted to the clerk of the local governing body with the jurisdictional responsibility for the property cited in the application except that in those cases of townships not

having a duly adopted zoning ordinance pursuant to the Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 to 125.3702, the application shall be submitted to the clerk of the governing body of the county.

(3) The application shall contain a map which includes all significant changes to the natural features of the land cited in the original application.

(4) A land owner or his heirs qualifying under section 11(2) of the act, death or total and permanent disability, at his option, may request termination of a development rights agreement or easement. The request shall be made to the holder of the development rights by certified mail stating the reasons for termination request and shall include a doctor's statement of health or a copy of the death certificate.

R 554.742 Certification and review.

Rule 4242. (1) The clerk shall certify the date of receipt of the application if the application meets the requirements of R 554.741 and the information contained in the application is accurate to the best of the clerk's knowledge.

(2) The clerk shall provide a copy of the certification to the applicant.

(3) The clerk shall forward copies of the application to the reviewing agencies as required under section 36104 of the act for farmland and designated open space and section 36106 of the act for local open space. Notification shall include the final date for the acceptance of comments, 30 days from the date of receipt of the application by the clerk.

(4) The clerk shall present the application at the next scheduled meeting of the local governing body and shall on the application certify the date of presentation.

(5) The 45-day review period for the local governing body shall commence when the application is presented to that body by the clerk.

R 554.743 Review.

Rule 43. (1) In reviewing a termination application for a farmland development rights agreement or a designated open space development rights easement, the local governing body or the state land use agency shall consider the following:

(a) That the agreement or easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued uneconomic operation because of the restrictions in the agreement or easement and not merely the existence of uses of the land that allow higher returns.

(b) Other factors set forth in section 36111(1)(a) of the act.

(2) In reviewing a termination application for a local open space development rights easement, the local governing body shall consider the following:

(a) That the easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued uneconomic operation because of the restrictions in the easement and not merely the existence of uses of the land that allow higher returns.

(b) Surrounding conditions or significant natural physical changes in the land which are generally irreversible in nature and permanently affect the land.

(3) If a termination application is for a local open space development rights easement which was appealed to the state land use agency and concurred in by the legislature, the application shall be forwarded to the state land use agency for review and recommendation to the legislature for final determination. The state land use agency shall consider the following:

(a) That the easement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. Economic inviability consists of continued

uneconomic operation because of the restrictions in the easement and not merely the existence of uses of the land that allow higher returns.

(b) Surrounding conditions or significant natural physical changes in the land which are generally irreversible in nature and permanently affect the land.

(c) That the property cited in the easement no longer bears significant importance to the public interest.

R 554.744 Approval or rejection.

Rule 44. (1) Approval or rejection of a termination application shall be by vote of the local governing body.

(2) The vote may be taken at either a regularly scheduled meeting of the local governing body or a special meeting called for the purpose of acting on the application. In each case the applicant shall be notified in writing by the clerk at least 5 days prior to the meeting of the time and place of the meeting.

(3) The clerk shall certify the results and date of the vote on the application.

(4) Within 10 days of the date the vote was taken, the clerk shall notify the applicant of the local governing body's decision. If rejected the local governing body shall provide the applicant with a written statement citing the reasons for rejection.

(5) A locally approved termination application for a farmland development rights agreement or for a designated open space development rights easement, together with supporting materials, shall be forwarded to the state land use agency within 10 days of the date of approval by the local governing body.

(6) A copy of a locally approved termination application for a local open space development rights easement, together with copies of the supporting materials, shall be forwarded to the state land use agency for informational purposes within 30 days of the date of approval by the local governing body.

(7) The 60-day review period as provided in sections 36104 and 36106 of the act begins with receipt of the termination application or appeal request by the state land use agency.

(8) The applicant shall be notified within 15 days of the date of approval or rejection by the state land use agency. If rejected, the state land use agency shall provide the applicant with a written statement citing the reasons for rejection.

(9) All open space development rights termination applications approved by the state land use agency shall be submitted within 30 days to the clerk of the house of representatives and secretary of the senate. Copies shall be forwarded to all of the following:

(a) Chairman of the house taxation committee and chairman of the senate taxation committee.

(b) Chairmen of the appropriations committees.

(c) Directors of the house fiscal agency and senate fiscal agency.

(10) An applicant shall be notified by the state land use agency within 15 days of the date of approval or rejection by the legislature.

R 554.746 Reapplication.

Rule 46. The 1-year waiting period for reapplication as provided in sections 36104 and 36106 of the act shall be from the date of notification of the last rejection permitted under the act, or if the applicant chooses not to appeal, from the date of expiration of the appeal period.

R 554.747 Rescinded.

R 554.750 Purchase of development rights or acquisition of agricultural conservation easements determination of value.

Rule 50. When a development rights easement or an agricultural conservation easement is being acquired under section 36111b of the act and the land considered for acquisition is encumbered by a farmland development rights agreement under the act, enrollment in the development rights agreement shall not be used in determining the fair market value under section 36111b(4) of the act.

R 554.751 Oil and gas exploration and extraction on land enrolled in development rights easement or development rights agreement.

Rule 51. The exploration and extraction of oil and gas on land covered by a development rights easement or development rights agreement is permitted provided the exploration and extraction operations does not substantially hinder the open space character or farming operations. Exploration and extraction activities may not commence until both of the following occur:

(a) The state land use agency has been notified, by certified mail, of the intended activity which shall include a site plan for the proposed facilities.

(b) The state land use agency has made a determination that the exploration or extraction operation, or both, does not substantially hinder the farming operation.

PROPOSED ADMINISTRATIVE RULES, NOTICES OF PUBLIC HEARINGS

MCL 24.242(3) states in part:

"… the agency shall submit a copy of the notice of public hearing to the Office of Regulatory Reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the Office of Regulatory Reform."

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules."

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

PART 2. AIR USE APPROVAL

Proposed Draft May 6, 2013

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of the 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of environmental quality by Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106)

R 336.1201 and R 336.1206 of the Michigan Administrative Code are amended, to read as follows:

R 336.1201 Permits to install.

Rule 201. (1) Except as allowed in R 336.1202, R 336.1277 to R 336.1290, or R 336.2823(15) a person shall not install, construct, reconstruct, relocate, or modify any process or process equipment, including control equipment pertaining thereto, which may emit any of the following, unless a permit to install which authorizes such action is issued by the department:

(a) Any air pollutant regulated by title I of the clean air act and its associated rules, including 40 C.F.R. §51.165 and §51.166, adopted by reference in R 336.1299.

(b) Any air contaminant.

A person who plans to install, construct, reconstruct, relocate, or modify any such process or process equipment shall apply to the department for a permit to install on an application form approved by the department and shall provide the information required in R 336.1203.

(2) The department may issue a permit to install for any of the following reasons:

(a) To authorize a person to install, construct, reconstruct, relocate, or modify a process or process equipment pursuant to subrule (1)(a) of this rule.

(b) To establish limits on potential to emit. The limits shall comply with the provisions of R 336.1205(1)(a).

(c) To consolidate terms and conditions from existing permits to install within a renewable operating permit pursuant to R 336.1214a.

(d) To authorize a person to install, construct, reconstruct, relocate, or modify process or process equipment solely pursuant to subrule (1)(b) of this rule or to consolidate state-only enforceable conditions within a renewable operating permit when the renewable operating permit is issued pursuant to R 336.1214. This permit may establish terms and conditions that are legally enforceable solely pursuant to R 336.1224 to R 336.1232, R 336.1901, or other regulations that are not federally

enforceable. Each condition in a permit issued pursuant to this subrule shall be identified as state-only enforceable.

(3) A permit to install may be approved subject to any condition, specified in writing, that is reasonably necessary to assure compliance with all applicable requirements.

(4) If a person decides not to install, construct, reconstruct, relocate, or modify the process or process equipment as authorized by a permit to install, then the person, or the authorized agent pursuant to R 336.1204, shall notify the department, in writing, and upon receipt of the notification by the department, the permit to install shall become void. If the installation, reconstruction, or relocation of the equipment, for which a permit has been issued, has not commenced within, or has been interrupted for, 18 months, then the permit to install shall become void, unless **either of the following occurs:**

(a) O~~o~~therwise authorized by the department as a condition of the permit to install**.**~~**, or**~~

(b) The installation permit is the subject of a formal appeal by a party other than the owner or operator of the process or process equipment that is the subject of the installation permit, in which case the date of termination of the permit is not later than 18 months after the effective date of the permit plus the number of days between the date on which the permit was appealed and the date on which all appeals concerning the permit have been resolved.

(5) Upon issuance of a permit to install, the emissions from the process or process equipment allowed by the permit to install shall be included in the potential to emit of the stationary source. Upon the physical removal of the process or process equipment, or upon a determination by the department that the process or process equipment has been permanently shut down, the permit to install shall become void and the emissions allowed by the permit to install shall no longer be included in the potential to emit of the stationary source.

(6) Except as provided in subrule (8) of this rule and R 336.1216, operation of the process or process equipment is allowed by the permit to install. The department may void a permit to install upon any of the following actions:

(a) A new permit to install authorizing the action is approved by the department in accordance with subrule (2)(a), (b), or (d) of this rule, and the new permit to install renders all portions of the old permit obsolete.

(b) All terms and conditions of the permit to install are incorporated into a renewable operating permit, in accordance with the provisions of R 336.1212(5) and R 336.1213, and a source-wide permit to install is issued pursuant to R 336.1214a.

(c) All of the emission units, processes, or process equipment covered by the permit to install are physically removed from the stationary source or the department makes a determination that the emission units, processes, or process equipment covered by the permit to install have been permanently shut down.

(7) The department may require 1 or both of the following notification requirements as a condition of a permit to install:

(a) Not more than 30 days after completion of the installation, construction, reconstruction, relocation, or modification authorized by the permit to install, unless a different period is specified in the permit to install, the person to whom the permit to install was issued, or the authorized agent pursuant to R 336.1204, shall notify the department, in writing, of the completion of the activity. Completion of the installation, construction, reconstruction, relocation, or modification is considered to occur not later than commencement of trial operation of the process or process equipment.

(b) Within 12 months after completion of the installation, construction, reconstruction, relocation, or modification authorized by the permit to install, or 18 months after the effective date of this rule, whichever is later, unless a different period is specified in the permit to install, the person to whom the permit to install was issued, or the authorized agent pursuant to R 336.1204, shall notify the department,

in writing, of the status of compliance of the process or process equipment with the terms and conditions of the permit to install. The notification shall include all of the following:

(i) The results of all testing, monitoring, and recordkeeping performed by the stationary source to determine the actual emissions from the process or process equipment and to demonstrate compliance with the terms and conditions of the permit to install.

(ii) A schedule of compliance for the process or process equipment.

(iii) A statement, signed by the person owning or operating the process or process equipment, that, based on information and belief formed after reasonable inquiry, the statements and information in the notification are true, accurate, and complete.

(8) If evidence indicates that the process or process equipment is not performing in accordance with the terms and conditions of the permit to install, the department, after notice and opportunity for a hearing, may revoke the permit to install consistent with section 5510 of the act. Upon revocation of the permit to install, operation of the process or process equipment shall be terminated. Revocation of a permit to install is without prejudice and a person may file a new application for a permit to install that addresses the reasons for the revocation.

R 336.1206 Processing of applications for permits to install.

Rule 206. (1) The department shall review an application for a permit to install for administrative completeness pursuant to R 336.1203(1) within 10 days of its receipt by the department. The department shall notify the applicant in writing regarding the receipt and completeness of the application.

(2) ~~Except for permit to install applications subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act, t~~**T**he department shall take final action to approve or deny a permit within ~~60~~ **180** days of receipt of ~~all information required pursuant to R 336.1203(1) and (2)~~ **an application for a permit to install**. The department shall take final action to approve or deny a permit to install subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act within ~~120~~ **240** days of receipt**.** ~~of all information required pursuant to R 336.1203(1) and (2). For the purpose of this subrule, the time between when the department requests additional information from an applicant and when the applicant actually provides that information shall not be included in the 60-day and 120-day time frames for final action by the department.~~ **If requested by the permit applicant, the department may extend the processing period beyond the applicable 180 or 240 day time limit. A processing period extension is effective after a formal agreement is signed by both the applicant and the department. However, a processing period shall not be extended under this subrule ~~subsection~~ to a date later than 1 year after all information required pursuant to R 336.1203(1) and (2) has been received. Permit processing period extensions shall be reported as a separate category under section 5522(9)(b) of the act.** The failure of the department to act on an application that includes all the information required pursuant to R 336.1203(1) and (2) within the time frames specified in this subrule may be considered a final permit action solely for the purpose of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay.

NOTICE OF PUBLIC HEARING

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Division

NOTICE OF PUBLIC HEARING

The Michigan Department of Environmental Quality (MDEQ), Air Quality Division (AQD), will conduct a comment period and public hearing on revisions to proposed administrative rules promulgated pursuant to revisions to Part 2, Air Use Approval, the Natural Resources and Environmental Protection Act, 1994 PA 451, (NREPA). The comment period and hearing will address requirements relative to the state administrative rules and revisions to Michigan's State Implementation Plan (SIP) under the federal Clean Air Act. These rules (ORR 2012-107 EQ) address Permits to Install and are identified as R 336.1201 (Rule 201(4)) and R 336.1206 (Rule 206). The proposed revision to Rule 201(4) provides for putting a hold on the 18-month construction window if the permit issuance has been appealed. The proposed Rule 206 revisions will require the AQD to act on all Permit to Install applications within 180 days of receipt, unless public participation is required, in which case a 240-day deadline will be required.

The public hearing will be held on June 13, 2013, 1:00 p.m., in the Lillian Hatcher Conference Room, Constitution Hall, 3rd Floor North, 525 West Allegan Street, Lansing, Michigan. If there are no participants or if those who are present have not spoken, the hearing will close at 2:00 p.m.

Copies of the proposed rules (ORR 2012-107 EQ) can be downloaded from the Internet through the Office of Regulatory Reinvention at http://www.michigan.gov/orr. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-241-6926 Fax: 517-241-7499 E-Mail: debrulerc@michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by June 13, 2013.

Persons needing accommodations for effective participation in the meeting should contact the AQD at 517-241-6926 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, Michigan Compiled Laws (MCL) 24.241 and 24.242, and federal regulations for SIP. Administration of the rules is by authority conferred on the Director of the MDEQ by Section 5512 of NREPA, MCL 324.5512. These rules will become effective immediately after filing with the Secretary of State.

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF ~~CONSUMER AND INDUSTRY SERVICES~~ **LICENSING AND REGULATORY AFFAIRS**
DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS ~~– CARCINOGENS~~

Proposed Draft May 8, 2013

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of **licensing and regulatory affairs** ~~consumer and industry services~~ by sections 14 and 24 of 1974 PA 154 and Executive Reorganization Orders Nos. **1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030** ~~1996-1 and 1996-2, MCL 408.1014, 408.1024, 330.3101, and 445.2001~~)

R 325.35001, R 325.35002, R 325.35003, R 325.35004, R 325.35005, R 325.35007, R 325.35008, R 325.35009, and R 325.35011, of the Michigan Administrative Code are amended and R 325.35002a and R 325.35006a are added, R 325.35010 is rescinded, as follows:

PART 350. CARCINOGENS

R 325.35001 Scope and application.

Rule 1. (1) These rules apply to any area in which the following ~~13~~ carcinogens are manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under R 325.35008:

(a) 4-Nitrobiphenyl, chemical abstracts service register number (CAS No.) 92933.
(b) alpha-Naphthylamine, CAS No. 134327.
(c) Methyl chloromethyl ether, CAS No. 107302.
(d) 3,3'-Dichlorobenzidine (and its salts) CAS No. 91941.
(e) bis-Chloromethyl ether, CAS No. 542881.
(f) beta-Naphthylamine, CAS No. 91598.
(g) Benzidine, CAS No. 92875.
(h) 4-Aminodiphenyl, CAS No. 92671.
(i) Ethyleneimine, CAS No. 151564.
(j) beta-Propiolactone, CAS No. 57578.
(k) 2-Acetylaminofluorene, CAS No. 53963.
(l) 4-Dimethylaminoazo-benezene, CAS No. 60117.
(m) N-Nitrosodimethylamine, CAS No. 62759.

(2) These rules shall not apply to **any of** the following:

(a) Solid or liquid mixtures containing less than 0.1% by weight or volume of any of the following:
(i) 4-Nitrobiphenyl.

(ii) Methyl chloromethyl ether.
(iii) Bis-chloromethyl ether.
(iv) Beta-Naphthylamine.
(v) Benzidine.
(vi) 4-Aminodiphenyl.
(b) Solid or liquid mixtures containing less than 1.0% by weight or volume of any of the following:
(i) Alpha-Naphthylamine.
(ii) 3,3'-Dichlorobenzidine (and its salts).
(iii) Ethyleneimine.
(iv) Beta-Propiolactone.
(v) 2-Acetylaminofluorene.
(vi) 4-Dimethylaminoazobenzene.
(vii) N-Nitrosodimethylamine.
~~(3) These rules replace OH rules 2301 and 2302.~~

R 325.35002 Definitions.

Rule 2. As used in these rules:

(a) "Absolute filter" means a filter capable of retaining 99.97% of a mono disperse aerosol of 0.3 um particles.

(b) "Authorized employee" means an employee whose duties require him or her to be in the regulated area and who has been specifically assigned by the employer.

(c) "Carcinogens" means all materials covered in the scope of these rules as described in R 325.35001.

(d) "Clean change room" means a room where employees put on clean clothing, protective equipment, or both, in an environment free of the ~~13~~ carcinogens **listed in R 325.135001(1)**.

(e) "Closed system" means an operation involving a carcinogen where containment prevents the release of the material into regulated areas, non-regulated areas, or the external environment.

(f) "Decontamination" means the inactivation of a carcinogen or its safe disposal.

(g) "Director" means the director of the Michigan department of licensing and regulatory affairs or his or her designee.

(h)~~(g)~~ "Disposal" means the safe removal of the carcinogens from the work environment.

(i)~~(h)~~ "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of a carcinogen that may result in exposure to or contact with the material.

(j)~~(i)~~ "External environment" means any environment external to regulated and nonregulated areas.

(k)~~(j)~~ "Isolated system" means a fully enclosed structure other than the vessel of containment of a carcinogen that is impervious to the passage of the material and would prevent the entry of the carcinogen into regulated areas, nonregulated areas, or the external environment if leakage or spillage from the vessel of containment occurs.

(l)~~(k)~~ "Laboratory-type hood" means a device which is enclosed on the 3 sides and the top and bottom, which is designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute, and which is designed, constructed, and maintained so that an operation involving a carcinogen within the hood does not require the insertion of any portion of any employee's body other than his or her hands and arms.

(m)~~(l)~~ "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(n)~~(m)~~ "Open-vessel system" means an operation involving a carcinogen in an open vessel that is not in an isolated system, a laboratory-type hood, nor in any other system affording equivalent

protection against the entry of the material into regulated areas, non-regulated areas, or the external environment.

(o)~~(n)~~ "Protective clothing" means clothing designed to protect an employee against contact with or exposure to a carcinogen.

(p)~~(o)~~ "Regulated area" means an area where entry and exit is restricted and controlled.

R 325.35002a MIOSHA standards by reference.

Rule 2a. The following Michigan occupational safety and health administration (MIOSHA) standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, MI, 48909-8143 or via the internet at website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.

(a) Occupational Health Part 430 "Hazard Communication," R 325.77001 to R 325.77003.

(b) Occupational Health Part 451 "Respiratory Protection," R 325.60051 to R 325.60052.

(c) Occupational Health Part 470 "Employee Medical Records and Trade Secrets," R 325.3451 to R 325.3476.

(d) Occupational Health Part 474 "Sanitation," R 325.47401 to R 325.47425.

R 325.35003 Requirements for areas containing a carcinogen.

Rule 3. (1) An employer shall ensure that a regulated area be established where a carcinogen is manufactured, processed, used, repackaged, released, handled, or stored.

(2) All areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(a) Isolated systems. An employer shall ensure that if an isolated system is used, the employees working with a carcinogen within an isolated system such as a "glove box" wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. An employer shall ensure that access to regulated areas be restricted to authorized employees where the carcinogens are stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while the carcinogens are contained within.

(3)~~(4)~~ If employees are exposed to any of the following**,** then employers shall ensure that employees wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit, and before engaging in other activities:

(a) 4-Nitrobiphenyl.

(b) Alpha-Naphthylamine.

(c) 3,3'-Dichlorobenzidine (and its salts).

(d) Beta-Naphthylamine.

(e) Benzidine.

(f) 4-Aminodiphenyl.

(g) 2-Acetylaminofluorene.

(h) 4-Dimethylaminoazo-benzene.

(i) N-Nitrosodimethylamine.

(4)~~(5)~~ An employer shall ensure that open-vessel system operations as defined in R 325.35002~~(l)~~ are prohibited.

(5)~~(6)~~ An employer shall ensure compliance with all of the following provisions when operations involve "laboratory-type hoods" or are in locations where carcinogens are contained in an otherwise "closed system," but are transferred, charged, or discharged into other normally closed containers:

(a) Access shall be restricted to authorized employees only.

(b) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(c) Employees shall be provided with, and required to wear, clean, full body protective clothing, such as smocks, coveralls, or long-sleeved shirt and pants, shoe covers, and gloves before entering a regulated area.

(d) **An employer shall provide each** employees engaged in handling operations involving carcinogens **addressed by this rule, with, and ensure that each of these employees wears and uses, a NIOSH-certified air-purifying, half-mask respirator with particulate filters for all of the following:** ~~shall be provided with, and required to wear and use, a half-face filter-type respirator with filters for dusts, mists, and fumes, or air-purifying canisters or cartridges. A respirator affording higher levels of protection than a half-face filter-type respirator may be substituted.~~

(i) 4-Nitrobiphenyl.

(ii) Alpha- Naphthylamine.

(iii) 3,3'-Dichlorobenzidine (and its salts).

(iv) Beta- Naphthylamine.

(v) Benzidine.

(vi) 4-Aminodiphenyl.

(vii) 2-Acetylaminofluorene.

(viii) 4-Dimethylaminoazo-benzene.

(ix) N-Nitrosodimethylamine.

(e) An employer shall provide each employee engaged in handling operations involving the carcinogens addressed by this rule, with, and ensure that each of these employees wears and uses any self-contained breathing apparatus that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus for all of the following:

(i) Methyl chloromethyl ether.

(ii) Bis-Chloromethyl ether.

(iii) Ethyleneimine.

(iv) Beta-Propiolactone.

(f) An employer may substitute a respirator affording employees higher levels of protection than the respirators specified in subrule (6) (d) and (e).

(g)~~(e)~~ Before each exit from a regulated area, an employer shall require employees to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day and to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of the impervious containers shall be identified in accordance with **R 325.35006a, R 325.35007, and** R 325.35008.

(h)~~(f)~~ Drinking fountains are prohibited in a regulated area.

(i)~~(g)~~ Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities. An employer shall require employees exposed to any of the following to shower after the last exit of the day:

(i) 4-Nitrobiphenyl.
(ii) Alpha-Naphthylamine.
(iii) 3,3'-Dichlorobenzidine (and its salts).
(iv) Beta-Naphthylamine.
(v) Benzidine.
(vi) 4-Aminodiphenyl.
(vii) 2-Acetylaminofluorene.
(viii) 4-Dimethylaminoazo-benzene.
(ix) N-Nitrosodimethylamine.

(6)~~(7)~~ If cleanup of leaks of spills, maintenance, or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with a carcinogen could result, then an employer shall ensure that each authorized employee entering that area comply ~~to~~ **with** all of the following requirements:

(a) **Be provided with and required to** wear clean, impervious garments, including gloves, boots, and a continuous air-supplied hood in accordance with **Occupational Health Standard Part 451 "Respiratory Protection," as referenced in R 325.35002a.** ~~29 C.F.R. §1910.134 as adopted by reference in occupational health standard R 325.60051 et seq. being Part 451. Respiratory Protection.~~

(b) Be decontaminated before removing the protective garments and hood.

(c) Shower upon removing the protective garments and hood.

(7)~~(8)~~ Laboratory activities. All of the following requirements apply to research and quality control activities involving the use of a carcinogen:

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which a carcinogen is handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated before removal from the work area. The wastes and carcasses shall be incinerated in a manner so that carcinogenic products are not released.

(e) All other forms of carcinogens shall be inactivated before disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposable absolute filters.

(g) An employer shall ensure that all of the following provisions are met for employees engaged in animal support activities:

(i) Employees shall be provided, and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices.

(ii) Employees shall remove and leave protective clothing and equipment at the point of exit before each exit from a regulated area and at the last exit of the day and place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. Containers shall comply with requirements set forth in R 325.35008.

(iii) Employees shall wash hands, forearms, face, and neck upon each exit from a regulated area close to the point of exit and before engaging in other activities.

(iv) Employees shall shower after the last exit of the day.

~~(h) An employer shall ensure that all of the following provisions are met for employees engaged in animal support activities~~:

~~(i) Provide, and require employees to wear, a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat~~.

~~(ii) Employees shall remove and leave protective clothing and equipment at the point of exit before each exit from a regulated area and at the last exit of the day and place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. Containers shall comply with the requirements set forth in R 325.35008.~~

~~(iii) Employees shall wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.~~

(h)~~(i)~~ Air pressure in laboratory areas and animal rooms where a carcinogen is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless decontaminated.

(i)~~(j)~~ There shall not be a connection between regulated areas and any other areas through the ventilation system.

(j)~~(k)~~ An employer shall maintain a current inventory of carcinogens.

(k)~~(l)~~ Ventilated apparatus, such as laboratory-type hoods, shall be tested at least semiannually or immediately after ventilation modification or maintenance operations, by personnel who are fully qualified to certify correct containment and operation.

R 325.35004 General regulated area requirements.

Rule 4. ~~(1) A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of 20 years. The rosters or summaries shall be provided upon request to the director or his or her authorized representative. If an employer ceases business without a successor, then rosters shall be forwarded by registered mail to the director.~~

(1)~~(2)~~ An employer shall implement a respiratory protection program in accordance with **Occupational Health Standard Part 451 "Respiratory Protection,"** 29 C.F.R. **Rules** 1910.134 (b), (c), (d), (except (d)(1)(iii) and (iv), and (d)(3)), and (e) through (m)**, as referenced in R 325.35002a, which covers each employee required by these rules to use a respirator.** ~~as adopted by reference in R 325.60051 et seq. being Part 451. Respiratory Protection.~~

(2)~~(3)~~ An employer shall ensure that in an emergency, immediate measures are implemented, including, but not limited to, all of the following measures:

(a) Evacuate the potentially affected area as soon as the emergency has been determined.

(b) Eliminate the hazardous conditions created by the emergency and decontaminate the potentially affected area before resuming normal operations.

(c) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. ~~A report of the medical surveillance and any treatment shall be included in the incident report in accordance with R 325.35010.~~

(d) Employees shall shower as soon as possible, unless contraindicated by physical injuries, when an employee has a known contact with a carcinogen.

~~(e) An incident report on the emergency shall be reported in accordance with R 325.35010.~~

(e)~~(f)~~ Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level as, locations where a direct exposure to ethyleneimine or beta-Propiolactone only would be most likely as a result of equipment failure or improper work practice.

R 325.35005 Hygiene facilities and practices.

Rule 5. (1) An employer shall take measures to prevent all of the following in regulated areas:

(a) The storage or consumption of food.

(b) The storage or use of containers of beverages.

(c) The storage or application of cosmetics.

(d) Smoking.

(e) The storage of smoking materials, tobacco products, or other products for chewing.

(f) The chewing of the items specified in **subdivision ~~subrule~~** ~~subdivision~~ (e) of this **subrule ~~rule.~~** ~~subrule.~~

(2) If employees are required by these rules to wash, then washing facilities shall be provided in accordance with **Occupational Health Standard Part 474 "Sanitation," as referenced in R 325.35002a.** ~~occupational health rule 4201(4), being Part 474. Sanitation.~~

(3) If employees are required by these rules to shower, then shower facilities shall be provided in accordance with **Occupational Health Standard Part 474 "Sanitation," as referenced in R 325.35002a.** ~~occupational health rule 4201(4), being Part 474. Sanitation.~~

(4) If employees wear protective clothing and equipment, then clean change rooms shall be provided for the number of employees who are required to change clothes in accordance with **Occupational Health Standard Part 474 "Sanitation," as referenced in R 325.35002a.** ~~occupational health rule 4201(5), being Part 474. Sanitation.~~

(5) Clean change room shall be contiguous to and have an entry from a shower room.

(6) If toilets are in regulated areas, then the toilets shall be in a separate room.

HAZARD COMMUNICATION

R 325.35006a Hazard communication, generally.

Rule 6a. (1) Chemical manufacturers, importers, distributors and employers shall comply with Occupational Health Standard Part 430 "Hazard Communication," as referenced in R 325.35002a, for each carcinogen listed in subrule (4) of this rule.

(2) In classifying the hazards of carcinogens listed in subrule (4) of this rule, at a minimum the hazards listed in subrule (4) of this rule are to be addressed.

(3) Employers shall include the carcinogens listed in subrule (4) of this rule in the hazard communication program established to comply with Occupational Health Standard Part 430 "Hazard Communication." Employers shall ensure that each employee has access to labels on containers of the carcinogens listed in subrule (4) of this rule, and to safety data sheets, and is trained in accordance with the requirements of subrule (4) of this rule and Occupational Health Standard Part 430 "Hazard Communication, " as referenced in R 325.35002a.

(4) All of the following carcinogens are included:

(a) 4-Nitrobiphenyl: Cancer.

(b) alpha-Naphthylamine: Cancer; skin irritation; and acute toxicity effects.

(c) Methyl chloromethyl ether: Cancer; skin, eye and respiratory effects; acute toxicity effects; and flammability.

(d) 3,3'-Dichlorobenzidine (and its salts): Cancer and skin sensitization.

(e) bis-Chloromethyl ether: Cancer; skin, eye, and respiratory tract effects; acute toxicity effects; and flammability.

(f) beta-Naphthylamine: Cancer and acute toxicity effects.

(g) Benzidine: Cancer and acute toxicity effects.

(h) 4-Aminodiphenyl: Cancer.

(i) Ethyleneimine: Cancer; mutagenicity; skin and eye effects; liver effects; kidney effects; acute toxicity effects; and flammability.

(j) beta-Propiolactone: Cancer; skin irritation; eye effects; and acute toxicity effects.

(k) 2-Acetylaminofluorene: Cancer.
(l) 4-Dimethylaminoazo-benzene: Cancer; skin effects; and respiratory tract irritation.
(m) N-Nitrosodimethylamine: Cancer; liver effects; and acute toxicity effects.

R 325.35007 Signs.

Rule 7. (1) An employer shall ensure that entrances to regulated areas are posted with signs bearing the following legend:

DANGER **(CHEMICAL IDENTIFICATION)** **MAY CAUSE CANCER** **AUTHORIZED PERSONNEL ONLY**

(2) The employer shall post signs at entrances to regulated areas containing operations covered in R 325.35003(7). The signs shall bear the following legend:

DANGER **(CHEMICAL IDENTIFICATION)** **MAY CAUSE CANCER** **WEAR AIR-SUPPLIED HOODS, IMPERVIOUS SUITS, AND PROTECTIVE EQUIPMENT IN THIS AREA** **AUTHORIZED PERSONNEL ONLY**

(3) Prior to June 1, 2016, employers may use the following legend in lieu of that specified in subrule (1) of this rule:

CANCER-SUSPECT AGENT AUTHORIZED PERSONNEL ONLY

(4**) Prior to June 1, 2016, employers may use the following legend in lieu of that specified in subrule (2) of this rule:** ~~(2) An employer shall ensure that entrances to regulated areas containing operations covered in R 325.35003(7) be posted with signs bearing the following legend:~~

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES AUTHORIZED PERSONNEL ONLY

(3) An employer shall ensure that appropriate signs and instructions are posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

~~(4) An employer shall ensure that lettering on signs and instructions is a minimum letter height of 2 inches (5 cm).~~

R 325.35008 Container labeling.

Rule 8. ~~(1)~~ An employer shall ensure **that nothing shall appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.** ~~that all of the following labeling requirements are complied with:~~

~~(a) Containers of a carcinogen and containers required in R 325.35003(6)(e) and (8)(g)(ii) and (h)(ii) that are accessible only to and handled only by authorized employees or by other employees trained in compliance with R 325.35009 may have labeling limited to a generic or proprietary name or other proprietary identification of the carcinogen and percent.~~

~~(b) Containers of a carcinogen and containers required in R 325.35003(6)(e) and (8)(g)(ii) and (h)(ii) that are accessible to or handled by employees other than authorized employees or employees trained in compliance with R 325.35009 shall have contents identification that includes the full chemical name and chemical abstracts service registry number as listed in R 325.35001(1).~~

~~(c) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.~~

~~(d) Containers that have contents which are carcinogens with corrosive or irritating properties shall have label statements warning of the hazards noting, if appropriate, particularly sensitive or affected portions of the body.~~

~~(e) Labels on containers shall be not less than 1/2 the size of the largest lettering on the package and be not less than 8-point type if the lettering is not required to be more than 1 inch (2.5 cm) in height.~~

~~(f) Nothing shall appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction~~.

R 325.35009 Training and indoctrination.

Rule 9. (1) An employer shall ensure that each authorized employee, before entering a regulated area and annually, receives training that includes, but is not limited to, all of the following:

(a) The nature of the carcinogenic hazards of a carcinogen to include local and systemic toxicity.

(b) The specific nature of the operation involving a carcinogen that could result in exposure.

(c) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination.

(d) The purpose for and application of decontamination practices and purposes.

(e) The purpose for and significance of emergency practices and procedures.

(f) The employee's specific role in emergency procedures.

(g) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of a carcinogen.

(h) The purpose for and application of specific first aid procedures and practices.

(2) An employer shall ensure that specific emergency procedures are prescribed~~,~~ and posted**,** and that employees are familiarized with emergency procedures terminology, and that the procedures are rehearsed.

(3) All materials relating to the program shall be provided upon request to the director of the department of **licensing and regulatory affairs** ~~consumer and industry services~~ or his or her authorized representative.

R 325.35010 **Rescinded.** ~~Reports.~~

~~Rule 10. (1) An employer shall report, in writing, all of the following to the director of the department of consumer and industry services:~~

~~(a) A brief description and in-plant location of the area or areas regulated and the address of each regulated area.~~

~~(b) The name or names and other identifying information of a carcinogen in each regulated area.~~

~~(c) The number of employees in each regulated area, during normal operations, including maintenance activities.~~

~~(d) The manner in which carcinogens are present in each regulated area, whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.~~

~~Any changes in the information specified in this subrule shall be similarly reported, in writing, within 15 calendar days of the change.~~

~~(2) An employer shall ensure that incidents that result in the release of a carcinogen into any area where employees may be potentially exposed are reported in accordance with all of the following provisions:~~

~~(a) A report of the occurrence of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within 24 hours to the director of the department of consumer and industry services.~~

~~(b) A written report shall be filed with the director of the department of consumer and industry services within 15 calendar days. The report shall contain all of the following information:~~

~~(i) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining the amount of material released.~~

~~(ii) A description of the area involved and the extent of known and possible employee exposure and area contamination.~~

~~(iii) A report of any medical treatment of affected employees and any medical surveillance program implemented.~~

~~(iv) An analysis of the circumstances of the incident and measures taken or to be taken, with specific completion dates, to avoid further similar releases.~~

R 325.35011 Medical surveillance, examinations, and medical records.

Rule 11. (1) An employer shall establish and implement, at no cost to employees, a medical surveillance program for employees considered for assignment to enter regulated areas.

(2) An employer shall ensure that a preassignment physical examination by a physician is provided before an employee is assigned to enter a regulated area. The examination shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors.

(3) An employer shall provide periodic physical examinations, at least annually, for authorized employees after the preassignment examination.

(4) For all physical examinations, an employer shall ensure that the examining physician consider whether there exist conditions of increased risk, including reduced immunological competence, treatment with steroids or cytotoxic agents, pregnancy, or cigarette smoking.

(5) Employers of employees examined pursuant to this rule shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. ~~Upon termination of the employee's employment, including retirement or death, or if the employer ceases business without a successor, records, or notarized true copies of records shall be forwarded, by registered mail, to the director of the department of consumer and industry services.~~

(6) An employer shall ensure that records required by this rule be provided upon request in compliance with **Occupational Health Standard Part 470, "Employee Medical Records and Trade Secrets," as referenced in R 325.35002a.** ~~R 325.3451 et seq., except R 325.3472 and R 325.3472a, being Part 470. Medical Records and Trade Secrets.~~ The records shall also be provided, upon request, to the director of the department of **licensing and regulatory affairs.** ~~consumer and industry services.~~

(7) A physician who conducts a medical examination required by this rule shall furnish~~,~~ to the employer~~,~~ a statement of the employee's suitability for employment in the specific exposure.

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF ~~CONSUMER AND INDUSTRY SERVICES~~ **LICENSING AND REGULATORY AFFAIRS**

DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS~~ – VINYL CHLORIDE~~

Proposed Draft May 8, 2013

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of **licensing and regulatory affairs** ~~consumer and industry services~~ by section**s 14 and** 24 of 1974 PA 154, MCL **408.1014 and** 408.1024, and Executive Reorganization Order Nos. 1996-1 and 1996-2, **2003-1, 2008-4, and 2011-4,** MCL 330.3101, ~~and~~ 445.2001,**445.2011, 445.2025 and 445.2030.)**

R 325.51401, R 325.51402, R 325.51404, R 325.51405, R 325.51406, R 325.51407, R 325.51409, R 325.51411, R 325.51412, R 325.51413, and R 325.51414 are amended to the Michigan Administrative code and R 325.51401a and R 325.51411a are added, as follows:

PART 302 VINYL CHLORIDE

R 325.51401 Scope and application.
Rule 1. (1) These rules specify the requirements for the control of employee exposure to vinyl chloride (chloroethene), chemical abstracts service registry no. 75014.
(2) These rules apply to the manufacture, reaction, packaging, repackaging, storage, handling, or use of vinyl chloride or polyvinyl chloride, but do not apply to the handling or use of fabricated products made of polyvinyl chloride.
(3) These rules apply to the transportation of vinyl chloride or polyvinyl chloride, except to the extent that the United States department of transportation regulates the hazards covered by these rules.
~~(4) These rules replace occupational health rule 2260, which is rescinded.~~

R 325.51401a Reference of standards.
Rule 1a. (1) The following occupational safety and health administrative standards are referenced in this standard. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143, or via the internet at: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.

(a) Occupational Health Standard Part 430 "Hazard Communication," R 325.77001 to R 325.77003.
(b) Occupational Health Standard Part 451 "Respiratory Protection," being R 325.60051 to R 325.60052.
(c) Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," being R 325.3451 to R 325.3476.
(2) The Appendix to these rules is informational only and is not intended to create any additional obligations or requirements not otherwise imposed by these rules or to detract from any established obligations or requirements.

R 325.51402 Definitions.
Rule 2. (1) **For purposes of this standard, the following definitions shall apply:** ~~As used in these rules:~~
(a) "Action level" means a concentration of vinyl chloride of 0.5 ppm averaged over an 8-hour work day.
(b) "Authorized person" means any person specifically authorized by the employer whose duties require him or her to enter a regulated area or any person entering an area as a designated representative of employees for the purpose of exercising an opportunity to observe monitoring and measuring procedures.
(c) "Director" means the director of the **Michigan** department of **licensing and regulatory affairs or his or her designee.** ~~consumer and industry services.~~
(d) "Emergency" means any occurrence such as equipment failure, or operation of a relief device which is likely to, or does, result in massive release of vinyl chloride.
(e) "Fabricated product" means a product made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride.
(f) "Hazardous operation" means an operation, procedure, or activity where a release of either vinyl chloride liquid or gas might be expected as a consequence of the operation or because of an accident in the operation, which would result in an employee exposure in excess of the permissible exposure limit.
(g) "Polyvinyl chloride" means polyvinyl chloride homopolymer or copolymer before conversion to a fabricated product.
(h) "Vinyl chloride" means vinyl chloride monomer.

R 325.51404 Monitoring.
Rule 4. (1) An employer shall undertake a program of initial monitoring and measurement in each establishment to determine if there is any employee exposed, without regard to the use of respirators, in excess of the action level.
(2) If a determination conducted under subrule (1) of this rule shows any employee exposures, without regard to the use of respirators, in excess of the action level, then an employer shall establish a program for determining exposures for each***** employee **as determined under subrule (1) of this rule**. The following **requirements** ~~provisions~~ apply to the program:
(a) Shall be repeated at least **quarterly** ~~monthly~~ if an employee is exposed, without regard to the use of respirators, in excess of the permissible exposure limit.
(b) Shall be repeated not less than **every 6 months** ~~quarterly~~ if an employee is exposed, without regard to the use of respirators, in excess of the action level.
(c) May be discontinued for an employee only if at least ~~two~~ **2** consecutive monitoring determinations, made not less than 5 working days apart, show exposures for the employee at or below the action level.

(3) If there is a production, process, or control change which may result in an increase in the release of vinyl chloride, or the employer has any other reason to suspect that any employee may be exposed in excess of the action level, then the employer shall ensure that a determination of employee exposure under subrule (1) of this rule is performed.
(4) An employer shall ensure that the method of monitoring and measurement has an accuracy**,** ~~(~~with a confidence level of 95 percent~~)~~**,** of not less than plus or minus 50 percent from 0.25 through 0.5 ppm, plus or minus 35 percent from over 0.5 ppm through 1.0 ppm, and plus or minus 25 percent over 1.0 ppm. Methods meeting these accuracy requirements are available in the "NIOSH Manual of Analytical Methods".
(5) An employee or a designated representative shall be afforded reasonable opportunity to observe the monitoring and measuring required by these rules.
~~* each exposed employee as determined under subrule (1) of this rule~~

R 325.51405 Regulated area.
Rule 5. (1) An employer shall establish a regulated area **where** ~~under~~ both of the following conditions **occur**:
(a) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used.
(b) Vinyl chloride concentrations are in excess of the permissible exposure limit.
(2) An employer shall limit access to regulated areas to authorized persons. A daily roster shall be made of authorized persons who enter.

R 325.51406 Methods of compliance.
Rule 6. ~~(1)~~ An employer shall ensure that employee exposure to vinyl chloride is controlled to**,** at**,** or below the permissible exposure limit provided in R 325.51403 ~~of these rules~~ by the following engineering, work practice, and personal protective controls:
(a) Feasible engineering and work practice controls shall immediately be used to reduce exposures to**,** at**,** or below the permissible exposure limit.
(b) If feasible engineering and work practice controls which can be instituted immediately are not sufficient to reduce exposures to**,** at**,** or below the permissible exposure limit, then the controls shall nonetheless be used to reduce exposures to the lowest practicable level, and shall be supplemented by respiratory protection in accordance with R 325.51407**.** ~~of these rules.~~ An employer shall establish and implement a program to reduce exposures to, at, or below the permissible exposure limit, or to the greatest extent feasible, solely by means of engineering and work practice controls, as soon as it is feasible.
(c) An employer shall develop written plans for a program and furnish the plans upon request for examination and copying to the authorized representatives of the director. The plans shall be updated at least **annually.** ~~every six months.~~

R 325.51407 Respiratory protection.
Rule 7. (1) For employees who use respirators required by these rules, an employer shall provide **each employee an appropriate respirator** ~~respirators~~ that **complies** ~~comply~~ with the requirements of these rules.
(2) An employer shall implement a respiratory protection program in accordance with **Occupational Health Standard Part 451, "Respiratory Protection,"** 29 C.F.R. **Rules** §1910.134 (c) to (d) and (f) to (m), except for (d)(1)(iii) and (d)(3)(iii)(B)(1) and (2), as ~~adopted by~~ reference**d** in **R 325.51401a.** ~~Michigan Administrative Rule, R 325.60051 et seq.~~
(3) **An employer shall do all of the following:**

(a) Select, and provide to employees, the appropriate respirators specified in paragraph (d)(3)(i)(A) of Occupational Health Standard Part 451 'Respiratory Protection,' as referenced in R 325.51401a.
(b) Provide an organic vapor cartridge that has a service life of at least 1 hour when using a chemical cartridge respirator at vinyl chloride concentrations up to 10 ppm.
(c) Select a canister that has a service life of at least 4 hours when using a powered air-purifying respirator having a hood, helmet, or full or half facepiece, or a gas mask with a front-or back-mounted canister, at vinyl chloride concentrations up to 25 ppm. ~~An employer shall select respirators from the following table:~~

~~Atmospheric concentration of vinyl chloride~~	~~Required apparatus~~
~~(a) Unknown, or above 3,600 parts per million (ppm)~~	~~Open-circuit, self-contained breathing apparatus, pressure demand type, with full facepiece.~~
~~(b) Not over 3,600 ppm~~	~~(i) Combination type C supplied-air respirator, pressure demand type, with full or half facepiece and auxiliary self-contained air supply; or~~
~~(c) Not over 1,000 ppm~~	~~(i) Combination type, supplied-air respirator continuous flow type, with full or half facepiece and auxiliary self-contained air supply. Type C, supplied-air respirator, continuous flow type, with full or half facepiece, helmet, or hood.~~
~~(d) Not over 100 ppm~~	~~(i) Combination type C supplied-air respirator, demand type, with full facepiece and auxiliary self-contained air supply; or~~ ~~(ii) Open-circuit self-contained breathing apparatus with full facepiece, in demand mode; or Type C supplied-air respirator, demand type, with full facepiece.~~
~~(e) Not over 25 ppm~~	~~(i) A powered air-purifying respirator with hood, helmet, full or half facepiece, and a canister that provides a service life of not less than 4 hours for concentrations of vinyl chloride up to 25 ppm; or~~ ~~(ii) A gas mask, front- or back-mounted canister that provides a service life of not less than 4 hours for concentrations of vinyl chloride up to 25 ppm.~~
~~(f) Not over 10 ppm~~	~~(i) Combination type C supplied-air respirator, demand type, with half facepiece and auxiliary self-contained air supply; or~~ ~~(ii) Type C supplied-air respirator, demand type, with half facepiece; or~~ ~~(iii) Any chemical cartridge respirator with an organic vapor cartridge that provides a service life of at least 1 hour for concentrations of vinyl chloride up to 10 ppm.~~
~~Note: Respirators specified for higher concentrations may be used for lower concentrations.~~	

(4) **Both of the following apply when air-purifying respirators are used:**
(a) An employer shall replace air-purifying canisters or cartridges before the expiration of their service life or the end of the shift in which they are first used, whichever occurs first.
(b) ~~In addition,~~ An employer shall provide a continuous monitoring and alarm system where concentrations of vinyl chloride could reasonably exceed the allowable concentrations for the devices in use. An employer shall use the system to alert employees when vinyl chloride concentrations exceed the allowable concentrations for the devices in use.
(5) An employer may use apparatus prescribed for higher concentrations for any lower concentration.

R 325.51409 Emergency situations.
Rule 9. ~~(1)~~ An employer shall develop a written operations plan for emergency situations for each facility storing, handling, or otherwise using vinyl chloride as a liquid or compressed gas. Appropriate portions of the plan shall be implemented in the event of an emergency. The plan shall specifically provide the following:
(a) Employers shall equip employees engaged in hazardous operations or correcting situations of existing hazardous releases as required in R 325.51408.
(b) Employers shall ensure that other employees not equipped in accordance with subdivision (a) of this **rule** ~~subrule~~ shall evacuate the area and not return until conditions are controlled by the methods required in R 325.51406 and the emergency is abated.

R 325.51411 Medical surveillance.
Rule 11. (1) An employer shall institute a program of medical surveillance for each employee exposed, without regard to the use of respirators, to vinyl chloride in excess of the action level.
The employer shall provide each exposed employee with an opportunity for examinations and tests in accordance with this subrule. **Both of the following shall be provided:**
(a) The employer shall ensure that all medical examinations and procedures be performed by or under the supervision of a licensed physician.
(b) The medical examinations and procedures shall be provided without cost to the employee.
(2) An employer shall ensure that at the time of initial assignment, or upon institution of medical surveillance, the following **requirements** ~~provisions~~ are met:
(a) A general physical examination shall be performed, with specific attention to detecting enlargement of liver, spleen or kidneys, or dysfunction in these organs, and for abnormalities in skin, connective tissues and the pulmonary system (See Appendix **A** ~~I~~ of this rule).
(b) A medical history shall be taken, to include all of the following information:
(i) Alcohol intake.
(ii) Past history of hepatitis.
(iii) Work history and past exposure to potential hepatotoxic agents, including drugs and chemicals.
(iv) Past history of blood transfusions.
(v) Past history of hospitalizations.
(c) A serum specimen shall be obtained and determinations made of **all of** the following:
(i) Total bilirubin.
(ii) Alkaline phosphatase.
(iii) Serum glutamic oxalacetic transaminase (SGOT).
(iv) Serum glutamic pyruvic transaminase (SGPT).
(v) Gamma glutamyl transpeptidase.
(3) An employer shall ensure that examinations provided in accordance with these rules are performed at least **the following**:

(a) Every 6 months for each employee who has been employed in vinyl chloride or polyvinyl chloride manufacturing for 10 years or longer.
(b) Annually for all other employees.
(4) An employer shall ensure that each employee exposed to an emergency is afforded appropriate medical surveillance.
(5) An employer shall obtain from the examining physician promptly after any examination a statement of each employee's suitability for continued exposure to vinyl chloride including use of protective equipment and respirators. An employer shall provide a copy of the physician's statement to each employee.
(6) An employer shall withdraw an employee from possible contact with vinyl chloride if the employee's health would be materially impaired by continued exposure.
(7) An employer shall ensure that laboratory analyses for all biological specimens included in medical examinations be performed **by accredited** ~~in~~ laboratories ~~licensed under 42 C.F.R. Part 74.~~
(8) If the examining physician determines that alternative medical examination to those required by subrule ~~(11)~~ (2) of this rule will provide at least equal assurance of detecting medical conditions pertinent to the exposure to vinyl chloride, then the employer may accept the alternative examinations as meeting the requirements of subrule ~~(11)~~ (2) of this rule. The employer shall obtain a statement from the examining physician setting forth the alternative examinations and the rationale for substitution. This statement shall be available upon request for examination and copying by the director.

HAZARD COMMUNICATION

R 325.51411a Hazard communication--general.
Rule 11a. (1) Chemical manufacturers, importers, distributors and employers shall comply with all requirements of the Occupational Health Standard Part 430 "Hazard Communication," as referenced in R 325.51401a, for vinyl chloride and polyvinyl chloride.
(2) In classifying the hazards of vinyl chloride, at least all of the following hazards are to be addressed:
(a) Cancer.
(b) Central nervous system effects.
(c) Liver effects.
(d) Blood effects.
(e) Flammability.
(3) An employer shall include vinyl chloride in the hazard communication program established to comply with the requirements of Occupational Health Standard Part 430 "Hazard Communication." as referenced in R 325.51401a. An employer shall ensure that each employee has access to labels on containers of vinyl chloride and to safety data sheets and is trained in accordance with the requirements of R 325.51410 of this rule and Occupational Health Standard Part 430 "Hazard Communication."

R 325.51412 Signs and labels.
Rule 12 **(1) The employer shall post entrances to regulated areas with legible signs bearing the following legend:**

DANGER
VINYL CHLORIDE
MAY CAUSE CANCER
AUTHORIZED PERSONNEL ONLY

(2) The employer shall post signs at areas containing hazardous operations or where emergencies currently exist. The signs shall be legible and bear the following legend:

DANGER
VINYL CHLORIDE
MAY CAUSE CANCER
WEAR RESPIRATORY PROTECTION AND
PROTECTIVE CLOTHING IN THIS AREA
AUTHORIZED PERSONNEL ONLY

(3)~~(1)~~ **Prior to June 1, 2016, an employer may use the following legend in lieu of that specified in subrule (1) of this rule:** ~~An employer shall ensure that entrances to regulated areas be posted with legible signs bearing the following legend:~~

CANCER-SUSPECT AGENT AREA
AUTHORIZED PERSONNEL ONLY

(4)~~(2)~~ **Prior to June 1, 2016, an employer may use the following legend in lieu of that specified in subrule (2) of this rule:** ~~An employer shall ensure that areas containing hazardous operations or where an emergency currently exists be posted with legible signs bearing the following legend:~~

CANCER-SUSPECT AGENT IN THIS AREA
PROTECTIVE EQUIPMENT REQUIRED
AUTHORIZED PERSONNEL ONLY

(5)~~(3)~~ **In addition to the other requirements in this rule, the employer shall ensure that labels for containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride are legible and include the following information:** ~~An employer shall ensure that containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride be legibly labeled with the following legend:~~

CONTAMINATED WITH VINYL CHLORIDE
MAY CAUSE CANCER ~~SUSPECT AGENT~~

(6) Prior to June 1, 2015, an employer may include the following information on labels of containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride in lieu of the labeling requirements in subrule (5) of this rule:

CONTAMINATED WITH VINYL CHLORIDE
CANCER-SUSPECT AGENT

(7)~~(4)~~ **Prior to June 1, 2015, an employer may include the following information for containers of polyvinyl chloride in lieu of the labeling requirements of R 325.51411a of this rule:** ~~An employer shall ensure that containers of polyvinyl chloride be legibly labeled with the following legend:~~

POLYVINYL CHLORIDE (or Trade Name) contains VINYL CHLORIDE VINYL CHLORIDE IS A CANCER-SUSPECT AGENT

(8)~~(5)~~ **Prior to June 1, 2015, an employer may include either the following information in this subrule or the information in subrule (9) of this rule, on containers of vinyl chloride in lieu of the labeling requirements in R 325.51411a:** ~~**of this rule:** An employer shall ensure that containers of vinyl chloride be legibly labeled with either of the following legends:~~
~~(a)~~

VINYL CHLORIDE EXTREMELY FLAMMABLE GAS UNDER PRESSURE CANCER-SUSPECT AGENT

(9)~~(b)~~ **An employer shall ensure that** in accordance with 49 C.F.R., Parts 170-189 (United States Department of Transportation regulations), ~~with~~ the additional following legend **is applied near the label or placard:**

CANCER-SUSPECT AGENT

~~applied near the label or placard.~~
(10)~~(6)~~ An employer shall ensure that no statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information, or instruction**.**

R 325.51413 Records.
Rule 13. (1) An employer shall ensure that all records maintained in accordance with these rules include the name and social security number of each employee, if relevant.
(2) An employer shall keep records of required monitoring and measuring, medical records, and authorized personnel rosters **in accordance with the requirements of Occupational Health Standard Part 470, "Employee Medical Records and Trade Secrets," as referenced in R 325.51401a.** An employer shall make the records available to the director for examination and copying.
(3) An employer shall ensure that monitoring and measuring records comply with all of the following **requirements:** ~~provisions~~:
(a) State the date of the monitoring and measuring and the concentrations determined and identify the instruments and methods used.
(b) Include any additional information necessary to determine individual employee exposures where exposures are determined by means other than individual monitoring of employees.
(c) Are maintained for not less than 30 years.
(4) An employer shall maintain authorized personnel rosters for not less than 30 years.

(5) An employer shall maintain medical records for the duration of employment of each employee plus 20 years, or for 30 years, whichever is longer.
~~(6) If an employer ceases to do business and there is no successor to receive and retain the employer's records for the prescribed period, then the employer shall transmit the records, by registered mail, to the director and shall notify each employee individually, in writing, of the transfer. An employer shall also comply with requirements in R 325.3475, "Employee Medical Records and Trade Secrets," regarding transfer of records.~~
~~(7) An employer shall provide access to an employee or the employee's designated representative to examine and copy records of required monitoring and measuring.~~
~~(8) An employer shall provide a former employee access to examine and copy required monitoring and measuring records reflecting the former employee's own exposures.~~
~~(9) Upon written request of an employee, an employer shall furnish a copy of the medical record of the employee to a physician designated by the employee.~~

R 325.51414 Reports.
Rule 14. ~~(1) Not later than 1 month after the establishment of a regulated area, an employer shall report the following information to the Michigan department of consumer and industry services:~~
~~(a) The address and location of each establishment that has 1 or more regulated areas.~~
~~(b) The number of employees in each regulated area during normal operations, including maintenance. An employer shall report any changes to the information within 15 days.~~
~~(2) An employer shall report emergencies, and the facts obtainable at the time of the emergency, to the Michigan department of consumer and industry services within 24 hours of the emergency. Upon request of the director of the department of consumer and industry services, the employer shall submit additional information, in writing, relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of similar nature.~~
~~(3)~~ Within **15** ~~10~~ working days following any monitoring and measuring which discloses that any employee has been exposed, without regard to the use of respirators, in excess of the permissible exposure limit, an employer shall notify each exposed employee, in writing, of the results of the exposure measurement and the steps being taken to reduce the exposure to within the permissible exposure limit.

APPENDIX **A** ~~I~~
SUPPLEMENTARY MEDICAL INFORMATION

When required tests under **R 325.51411(2)** ~~section (11)(2) of this rule~~ show abnormalities, the tests should be repeated as soon as practicable, preferably within 3 to 4 weeks. If tests remain abnormal, consideration should be given to withdrawal of the employee from contact with vinyl chloride, while a more comprehensive examination is made.

Additional tests which may be useful:
A. For kidney dysfunction: Urine examination for albumin, red blood cells, and exfoliative abnormal cells.
B. Pulmonary system: Forced vital capacity, forced expiratory volume at 1 second, and chest roentgenogram (posterior-anterior, 14 x 17 inches).
C. Additional serum tests: Lactic acid dehydrogenase, lactic acid dehydrogenase isoenzyme, protein determination, and protein electrophoresis.

D. For a more comprehensive examination on repeated abnormal serum tests: Hepatitis B antigen, and liver scanning.

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF ~~CONSUMER AND INDUSTRY SERVICES~~ **LICENSING AND REGULATORY AFFAIRS**

DIRECTOR'S OFFICE

OCCUPATIONAL HEALTH STANDARDS ~~– COKE OVEN EMISSIONS~~

Proposed Draft May 8, 2013

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under section~~s~~ 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of **licensing and regulatory affairs** ~~consumer and industry services~~ by section**s 14 and** 24 of 1974 PA 154, **and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030** ~~MCL 408.1024, and Executive Reorganization Order Nos. 1996-1 and 1996-2, MCL 330.3101 and 445.2001~~)

R 325.50101, R 325.50102, R 325.50105, R 325.50106, R 325.50107, R 325.50108, R 325.50109, R 325.50110, R 325.50111, R 325.50114, R 325.50115, R 325.50116, R 325.50117, R 325.50118, R 325.50119, R 325.50121, R 325.50123, R 325.50124, R 325.50125, R 325.50128, R 325.50129, R 325.50130, R 325.50131, R 325.50132, R 325.50133, R 325.50134, R 325.50135 of the Michigan Administrative Code are amended, R 325.50100, R 325.50102a, R 325.50106a, and R 325.50129a. are added, and R 325.50136 is rescinded, as follows:

PART 314. COKE OVEN EMISSIONS

R 325.50100 Scope and application.

Rule 100. This rule applies to the control of employee exposure to coke oven emissions, except that this rule shall not apply to working conditions under which other federal and state agencies exercise statutory authority to prescribe or enforce standards affecting occupational safety and health.

R 325.50101 Definitions; A to E.

Rule 101. ~~As used in these rules:~~ **(1)**~~(a)~~ "Authorized person" means a person specifically required by the employer to enter a regulated area or a person entering a regulated area as a designated representative of employees for the purpose of observing the monitoring and measuring procedures under R 325.50135.

(2)~~(b)~~ "Beehive oven" means a coke oven in which the products of carbonization other than coke are not recovered, but are released into the ambient air.

(3)~~(c)~~ "Coke oven" means a retort in which coke is produced by the destructive distillation or carbonization of coal.

(4)~~(d)~~ "Coke oven battery" means a structure containing a number of slot-type coke ovens.

(5)~~(e)~~ "Coke oven emissions" means the soluble fraction of total particulate matter present during the destructive distillation or carbonization of coal for the production of coke as determined by benzene extraction or an equivalent analytical method.

(6)~~(f)~~ "Director" means the director of the Michigan department of **licensing and regulatory affairs** ~~consumer and industry services~~ or his or her authorized representative.

(7)~~(g)~~ "Emergency" means an occurrence, such as, but not limited to, equipment failure, that is likely to, or does, result in a massive release of coke oven emissions.

(8)~~(h)~~ "Existing coke oven battery" means a battery which is in operation or under construction on January 20, 1977, and which is not a rehabilitated coke oven battery.

R 325.50102 Definitions; G to S.

Rule 102. ~~As used in these rules:~~ **(1)**~~(a)~~ "Green push" means coke that, when removed from the oven, results in emissions due to the presence of incompletely coked coal.

~~(b) "O.H. rule" means an occupational health rule adopted by reference in accordance with section 14 of 1974 PA 154, MCL 408.1014. Copies of these rules are available from the Michigan department of consumer and industry services.~~

(2)~~(c)~~ "Pipeline charging" means an apparatus used to introduce coal into an oven which uses a pipe or duct permanently mounted onto an oven and through which coal is charged.

(3)~~(d)~~ "Rehabilitated coke oven battery" means a battery that is rebuilt, overhauled, renovated, or restored from the pad up after January 20, 1977.

(4)~~(e)~~ "Sequential charging" means a procedure, usually automatically timed, by which a predetermined volume of coal in each larry car hopper is introduced into an oven so that not more than 2 hoppers commence or finish discharging simultaneously although, at some point, all hoppers are discharging simultaneously.

(5)~~(f)~~ "Stage charging" means a procedure by which a predetermined volume of coal in each larry car hopper is introduced into an oven so that not more than 2 hoppers are discharging simultaneously.

R 325.50102a MIOSHA standards by reference, appendices.

Rule 102a. (1) The following Michigan occupational safety and health administration (MIOSHA) standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Standards Section, 7150 Harris Drive, P.O. Box 30643, Lansing, MI, 48909-8143 or via the internet at website: www.michigan.gov/mioshastandards. For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.

(a) General Industry Safety Part 33 "Personal Protective Equipment," R 408.13301 to R 408.13398.

(b) Occupational Health Standard Part 430 "Hazard Communication," R 325.77001 to R 325.77003.

(c) Occupational Health Standard Part 451 "Respiratory Protection," being R 325.60051 to R 325.60052.

(d) Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," R 325.3451 to R 325.3476.

(2) The information contained in the appendices to these rules is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

R 325.50105 Exposure monitoring and measurements; accuracy of methods; notifications to employees; corrective actions.

Rule 105. (1) An employer who has a place of employment where coke oven emissions are present shall monitor employees working in the regulated area to measure their exposure to coke oven emissions.

(2) An employer shall obtain measurements which are representative of each employee's exposure to coke oven emissions over an 8-hour period. All measurements shall determine exposure without regard to the use of respiratory protection.

(3) An employer shall collect full-shift**,** ~~(~~for not less than 7 continuous hours~~)~~**,** personal samples, or shall employ other equivalent monitoring procedures, including at least 1 sample during each shift for each battery and each job classification, including maintenance personnel, within the regulated areas.

(4) An employer shall repeat the monitoring and measurements required by this rule at least once every 3 months.

(5) If a production, process, or control change is made which may result in new or additional exposure to coke oven emissions, or whenever the employer has any other reason to suspect an increase in employee exposure, the employer shall repeat the monitoring and measurements required by this rule for those employees affected by such change or suspected increase.

(6) An employer shall use a method of monitoring and measurement which has an accuracy**,** ~~(~~with a confidence level of 95%~~)~~**,** of not less than plus or minus 35% for concentrations of coke oven emissions greater than~~,~~ or equal to 150 ug/m3.

(7) An employer shall, **within 15 working days after the receipt of the results of any monitoring performed under these rules, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees**. ~~provide written notice to each employee of the exposure measurements which represent that employee's exposure within 5 working days after the receipt of the results of measurements required by this rule.~~

(8) If exposure measurements indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall, in such notification, inform each employee of that fact and of the corrective action being taken to reduce exposure to or below the permissible exposure limit.

R 325.50106 Compliance programs.

Rule 106. (1) An employer shall establish and implement a written program to reduce exposures to coke oven emissions solely by means of the engineering and work practice controls required in **R 325.50107 to R 325.50116.** ~~Rules 107 to 116.~~

(2) The written program shall include, at least **all of** the following:

(a) A description of each coke oven operation by battery, including~~,~~ work force and operating crew, coking time, operating procedures, and maintenance practices.

(b) Engineering plans and other studies used to determine the controls for the coke battery.

(c) A report of the technology considered in meeting the permissible exposure limit.

(d) A monitoring program in accordance with **R 325.50105.** ~~Rule 105.~~

(e) A detailed schedule for the implementation of the engineering and work practice controls required in **R 325.50110, R 325.50111, and R 325.50112.** ~~Rules 110, 111, and 112.~~

(f) Other relevant information.

(3) If, after implementing all controls required by **R 325.50110, R 325.50111, and R 325.50112,** ~~Rules 110, 111, and 112~~ or after completion of a new or rehabilitated battery, the permissible exposure limit is still exceeded, an employer shall develop a detailed written program and schedule for the

implementation of any additional engineering controls and work practices necessary to reduce exposure to or below the permissible exposure limit.

(4) A written plan for a compliance program shall be submitted, upon request, to the director and shall be available at the worksite for examination and copying by the director, the employee, and the authorized representative. The plan shall be revised and updated at least **annually** ~~once every 6 months~~ to reflect the current status of the program.

R 325.50106a Methods of compliance and training.

Rule 106a. (1) An employer shall control employee exposure to coke oven emissions by the use of engineering controls, work practices and respiratory protection as described in R 325.50107.

(2) Training in compliance procedures. An employer shall incorporate all written procedures and schedules required in R 325.50106, R 325.50107, R 325.50108, R 325.50109, R 325.50110, R 325.50111, R 325.50112, R 325.50113, R 325.50114, R 325.50115, R 325.50116, and R 325.50120 in the information and training programs required under R 325.50128 and R 325.50129 and where appropriate, post in the regulated area.

R 325.50107 **Priority** ~~Methods~~ of compliance **methods**; existing coke oven batteries.

Rule 107. (1) An employer shall institute the engineering and work practice controls listed in **R 325.50110, R 325.50111, and R 325.50112,** ~~Rules 110, 111, and 112~~ ~~in~~ **for** existing coke oven batteries at the earliest possible time, but not later than January 20, 1980, except to the extent that the employer can establish that such controls are not feasible.

(2) In determining the earliest possible time for institution of engineering and work practice controls, the requirement, effective August 27, 1971, to implement feasible administrative or engineering controls to reduce exposures to coal tar pitch volatiles, shall be considered. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, an employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of R 325.50117.

(3) The engineering and work practice controls required under R 325.50110, R 325.50111, and R 325.50112 are minimum requirements generally applicable to all existing coke oven batteries.

(4)~~(2)~~ If, after implementing all controls required by **R 325.50110, R 325.50111, and R 325.50112,** ~~Rules 110, 111, and 112~~ or after January 20, 1980, whichever is sooner, employee exposures still exceed the permissible exposure limit, an employer shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(5)~~(3)~~ Where the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, an employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by use of respiratory protection which complies with the requirements of **R 325.50117 to R 325.50119.** ~~Rules 117 to 119.~~

R 325.50108 Methods of compliance; new or rehabilitated coke oven batteries.

Rule 108. (1) An employer shall institute the best available engineering and work practice controls on all new or rehabilitated coke oven batteries to reduce and maintain employee exposure at or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(2) If, after implementing the best available engineering and work practice controls required by these rules, employee exposures still exceed the permissible exposure limit, an employer shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(3) If the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, an employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of **R 325.50117 to R 325.50119.** ~~Rules 117 to 119.~~

R 325.50109 Methods of compliance; beehive ovens.

Rule 109. (1) An employer shall institute engineering and work practice controls on beehive ovens at the earliest possible time to reduce and maintain employee exposures at or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(2) If, after implementing all engineering and work practice controls required by **subrule (1) of this rule,** ~~Rule 109(1),~~ employee exposures still exceed the permissible exposure limit, an employer shall implement any other engineering and work practice controls necessary to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(3) If the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, an employer shall nonetheless use them to reduce exposure to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of **R 325.50117 to R 325.50119.** ~~Rules 117 to 119.~~

(4) In determining the earliest possible time for institution of engineering and work practice controls, the requirement, effective August 27, 1971, to implement feasible administrative or engineering controls to reduce exposures to coal tar pitch volatiles, shall be considered.

R 325.50110 Existing coke oven battery; engineering controls during charging operations.

Rule 110. ~~(1)~~ An employer shall equip and operate existing coke oven batteries with all of the following engineering controls to control coke oven emissions during charging operations:

(a) One of the following methods of charging **shall be used**:

(i) Stage charging as described in **R 408.50113(2).** ~~Rule 113(2).~~

(ii) Sequential charging as described in **R 408.50113(2),** ~~Rule 113(2),~~ except that ~~Rule~~ **R 408.50**113(2)(b)(iv) does not apply to sequential charging.

(iii) Pipeline charging or other forms of enclosed charging in accordance with ~~Rule 110~~ **this rule** (1), except ~~Rules 110 (1)~~ **subdivisions** (b), (d), (e), (f), and (h) **of this rule**, do not apply.

(b) Drafting from 2 or more points in the oven being charged, through the use of double collector mains or a fixed or moveable jumper pipe system to another oven, to effectively remove the gases from the oven to the collector mains.

(c) Aspiration systems designed and operated to provide sufficient negative pressure and flow volume to effectively move the gases evolved during charging into the collector mains, including sufficient steam pressure, and steam jets of sufficient diameter.

(d) Mechanical volumetric controls on each larry car hopper to provide the proper amount of coal to be charged through each charging hole so that the tunnel head will be sufficient to permit the gases to move from the oven into the collector mains.

(e) Devices to facilitate the rapid and continuous flow of coal into the oven being charged, such as stainless steel liners, coal vibrators, or pneumatic shells.

(f) Individually operated larry car drop sleeves and slide gates or equivalent charge systems designed and maintained so that the gases are effectively removed from the oven into the collector mains.

(g) Mechanized gooseneck and standpipe cleaners.

(h) Air seals on the pusher machine leveler bars to control air infiltration during charging.

(i) Roof carbon cutters or a compressed air system or both on the pusher machine rams to remove roof carbon.

R 325.50111 Existing coke oven battery; engineering controls during coking operations.

Rule 111. **The employer shall equip and operate existing coke oven batteries with all of the following engineering controls to control coke oven emissions during coking operations:** ~~An employer shall control coke oven emissions from existing coke oven batteries during coking operations by:~~

(a) A pressure control system on each battery to obtain uniform collector main pressure.

(b) Ready access to door repair facilities to facilitate the prompt and efficient repair of doors, door sealing edges, and all door parts.

(c) An adequate number of spare doors available for replacement purposes.

(d) Chuck door gaskets to control chuck door emissions until such door is repaired or replaced.

(e) Heat shields on door machines.

R 325.50114 Work practice controls; coking.

Rule 114. An employer shall **operate existing coke oven batteries pursuant to a detailed written procedure established and implemented for the control of coke oven emissions during coking,** ~~establish and implement a detailed written coking procedure for existing coke oven batteries~~ consisting of at least **all of** the following elements:

(a) Checking oven back pressure controls to maintain uniform pressure conditions in the collecting main.

(b) Repair, replacement, and adjustment of oven doors and chuck doors, and replacement of door jambs to provide a continuous metal-to-metal fit.

(c) Cleaning of oven doors, chuck doors, and door jambs after each coking cycle to provide an effective seal.

(d) An inspection system and corrective action program to control door emissions to the maximum extent possible.

(e) Luting of doors that are sealed by luting after each coking cycle and reluting, replacing, or adjusting as necessary to control leakage.

R 325.50115 Work practice controls; pushing.

Rule 115. An employer shall control coke oven emissions during pushing operations by quenching coke and coal spillage as soon as practicable and not shoveling them into a heated oven, and by a detailed written procedure for each battery established and implemented for the control of emissions during pushing consisting of the following elements:

(a) Dampering off the ovens and removal of charging hole lids to effectively control coke oven emissions during the push.

(b) Heating the coal charge uniformly for a sufficient period to obtain proper coking, including the prevention of green pushes.

(c) **Preventing** ~~Prevention of~~ green pushes to the maximum extent possible.

(d) **Inspecting** ~~Inspection~~, **adjust** ~~adjustment~~, and **correct** ~~correction of~~ heating flue temperatures and **defective** ~~effective~~ flues at least once weekly and after any green push, to prevent green pushes.

(e) Cleaning of heating flues and related equipment at least once weekly and after any green push to prevent green pushes.

R 325.50116 Work practice controls; maintenance and repair.

Rule 116. An employer shall **operate existing coke oven batteries pursuant to a detailed written procedure of maintenance and repair established and implemented for the effective control of coke oven emissions consisting** ~~establish and implement a detailed written procedure of maintenance for existing coke oven batteries which shall consist~~ of the following elements:

(a) Regular inspection of all controls, including goosenecks, standpipes, standpipe caps, charger hole lids and castings; regular inspection of jumper standings, jumper pipes, and air seals for cracks, misalignment, or other defects; and prompt implementation of the necessary repairs, **as soon as possible.**

(b) Maintaining the regulated area in a neat, orderly condition free of coal and coke spillage and debris.

(c) Regular inspection of the damper system, aspiration system, and collector main for cracks or leakage, and prompt implementation of the necessary repairs.

(d) Regular inspection of the heating system and prompt implementation of the necessary repairs.

(e) Prevention of miscellaneous fugitive topside emissions.

(f) Regular inspection and patching of oven brickwork.

(g) Maintenance of battery equipment and controls in good working order.

(h) Maintenance and repair of coke oven doors, chuck doors, door jambs**,** and seals.

(i) Installation of chuck door gaskets prior to the next coking cycle.

(j) Instituting and completing repairs as soon as possible, including temporary repair measures instituted and completed where necessary, which include, but are not limited to, the requirements of ~~subrules~~ **subdivisions** (e) and (i) of this rule.

R 325.50117 Respiratory protection.

Rule 117. (1) **For employees who use respirators required by these rules, an employer shall provide each employee an appropriate respirator that complies with the requirements of this rule. Respirators must be used during all of the following:** ~~If respiratory protection is required under these rules, then an employer shall provide, and assure the use of, respirators that comply with the requirements of R 325.60051 et seq. and these rules. An employer shall not use respirators to achieve compliance with the permissible exposure limit, except during any of the following:~~

(a) Periods necessary to install or implement feasible engineering and work practice controls.

(b) Work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limit.

(c) Work operations such as maintenance and repair activity in which engineering and work practice controls are not technologically feasible.

(d) Emergencies.

(2) **An employer shall implement a respiratory protection program in accordance with Occupational Health Standard Part 451, "Respiratory Protection," rules § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), as referenced in R 325.50102a, which covers each employee required by this section to use a respirator.** ~~If respirators are required, then an employer shall select, provide, and assure the use of, the appropriate respirator or combination of respirators on the basis of the table 1:~~

(3) **An employer shall select and provide to employees, the appropriate respirators specified in Occupational Health Standard Part 451, "Respiratory Protection," as referenced in R 325.50102a, subrule § 1910.134(d)(3)(i)(A); however, an employer may use a filtering facepiece respirator only when it functions as a filter respirator for coke oven emissions particulates.** ~~If a respirator is required by this rule for concentrations that are not more than 1500 µg/m3, an employer shall provide, at the option of each affected employee, either a particulate filter respirator or a powered air-purifying respirator as described in table 1.~~

~~Table 1. Respiratory Protection for Coke Oven Emissions~~	
~~Airborne Concentration of Coke Oven Emissions~~	~~Approved Respirator~~
~~(a) Any concentration~~	~~(1) A type C supplied-air respirator operated in pressure demand or other positive pressure or continuous flow mode; or (2) A powered air-purifying particulate filter respirator for dust and mist; or (3) A powered air-purifying particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions.~~
~~(b) Concentrations not more than 1500 µg/m3~~	~~(1) Any particulate filter respirator for dust and mist, except single-use respirator; or (2) Any particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions; or (3) Any respirator listed in this rule.~~

R 325.50118 Protective clothing and equipment; provision and use.

Rule 118. An employer shall provide, and ~~assure~~ **ensure** the use of, appropriate protective clothing and equipment, such as, but not limited to, all of the following:

(a) Flame-resistant jacket and pants.

(b) Flame-resistant gloves.

(c) Devices that insulate footwear from hot surfaces.

(d) Face shields or vented goggles that comply with **General Industry Safety Standard Part 33 "Personal Protective Equipment," as referenced in R 325.50102a.** ~~R 408.13310 et seq. of the Michigan Administrative Code administered and enforced by the Michigan department of consumer and industry services~~.

(e) Safety shoes that comply with **General Industry Safety Standard Part 33 "Personal Protective Equipment," as referenced in R 325.50102a.** ~~R 408.13301 et seq. of the Michigan Administrative Code administered and enforced by the Michigan department of~~ ~~consumer and industry services~~.

(f) Protective helmets that comply with **General Industry Safety Standard Part 33 "Personal Protective Equipment," as referenced in R 325.50102a.** ~~the general industry rule R 408.13301 et seq. of the Michigan Administrative Code administered and enforced by the Michigan department of consumer and industry services~~.

R 325.50119 Protective clothing and equipment; cleaning and replacement.

Rule 119. Where protective clothing is required by these rules, an employer shall do all of the following:

(a) Provide the protective clothing required by ~~Rule~~ **R 325.50**118(a) and (b) in a clean and dry condition at least once weekly.

(b) Clean, launder, or dispose of protective clothing required by ~~Rule~~ **R 325.50**118(a) and (b).

(c) Repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(d) ~~Assure~~ **Ensure** that all protective clothing is removed at the completion of a work shift and only in change rooms required by these rules.

(e) ~~Assure~~ **Ensure** that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closable container in the change room.

(f) Inform any person who cleans or launders protective clothing required by this rule of the potentially harmful effects of exposure to coke oven emissions.

R 325.50121 Hygiene facilities and practices; change rooms, showers, and lavatories.

Rule 121. (1) An employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment in accordance with ~~Rule~~ **R 325.50**118.

(2) An employer shall ~~assure~~ **ensure** that employees working in a regulated area shower at the end of the work shift.

(3) An employer shall provide shower facilities in accordance with **R 325.47416 of Occupational Health Standard Part 474 "Sanitation," as referenced in R 325.50102a.** ~~O.H. rule 4201(4), Sanitation – washing facilities~~.

(4) An employer shall ~~assure~~ **ensure** that employees working in the regulated area wash their hands and face prior to eating.

(5) An employer shall provide lavatory facilities in accordance with **Occupational Health Standard Part 474 "Sanitation," as referenced in R 325.50102a.** ~~O.H. rule 4201(4), Sanitation – washing facilities~~.

(6) An employer shall provide lunchroom facilities which have a temperature controlled, positive-pressure, filtered air supply, and which are readily accessible to employees working in the regulated area.

R 325.50123 Medical surveillance; general requirements.

Rule 123. (1) An employer shall institute a medical surveillance program for all employees who are employed in a regulated area for not less than 30 days per year.

(2) This program shall provide that medical examinations and procedures in accordance with ~~Rule 123~~ **subrule**(1) **of this rule** be made available, at the employer's cost, to each employee during scheduled working hours or at other times agreeable to both the employee and the employer.

(3) An employer shall inform an employee who refuses a required medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the employee indicating that the employee understands the risk involved in the refusal to be examined.

(4) An employer shall ~~assure~~ **ensure** that all medical examinations and procedures are performed by, or under the supervision of, a licensed physician.

R 325.50124 Medical surveillance; initial examinations.

Rule 124. At the time of initial assignment to a regulated area or upon the institution of the medical surveillance program, an employer shall provide a medical examination for employees covered under R 325.50123(1) that includes at least all of the following elements:

(a) A work history and medical history that includes smoking history and the presence and degree of respiratory symptoms, such as breathlessness, cough, sputum production, and wheezing.

(b) A **standard** ~~14 by 17 inch~~ posterior-anterior chest x-ray. ~~film~~. ~~An international labor office UICC/Cincinnati (ILO U/C) rating is recommended.~~

(c) Pulmonary function tests, including forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV 1.0). The employer shall record the type of equipment used to perform the tests.

(d) Weight.

(e) A skin examination.

(f) Urinalysis for sugar, albumin, and hematuria.

(g) A urinary cytology examination.

R 325.50125 Medical surveillance; periodic examinations.

Rule 125. (1) An employer shall provide the examinations specified in R 325.50124(a) to (f) at least annually for employees covered under R 325.50123(1).

(2) An employer shall provide the examinations specified in R 325.50124 (a) ~~and (c)~~ to (g) at least ~~once~~ **annually** ~~semiannually~~ for employees who are 45 years of age or older or who have 5 or more years of employment in the regulated area.

(3) If an employee who is 45 years of age or older, or who has 5 or more years of employment in the regulated area, transfers or is transferred from employment in a regulated area, then the employer shall continue to provide the examinations specified in R 325.50124(a) to (g) ~~once~~ **annually** ~~semiannually~~ as long as the employee is employed by the same employer or a successor employer.

(4) If an employee has not taken the examinations specified in subrules (1) to (3) of this rule within the 6 months preceding the termination of employment, then the employer shall provide the examinations to the employee upon termination of employment.

R 325.50128 Employee information and training.

Rule 128. (1) An employer shall **train each employee who is employed in a regulated area in accordance with the requirements of these rules. The employer shall institute a training program and ensure employee participation in the program.** ~~institute a training program for employees who are employed in a regulated area and shall assure their participation.~~

(2) The training program shall be provided as of **January 27, 1977** ~~the effective date of these rules~~ for employees who are employed in the regulated area at that time or at the time of initial assignment to a regulated area.

(3) The training program shall be provided at least annually for all employees who are employed in the regulated area, except that training regarding the occupational safety and health hazards associated with exposure to coke oven emissions and the purpose, proper use, and limitations of respiratory protective devices shall be provided at least quarterly for the first year after the initiation of the training program.

(4) The training program shall include informing each employee of all of the following:

(a) The information contained in the substance information sheet for coke oven emissions. **(Appendix A);**

(b) The purpose, proper use, and limitations of respiratory protective devices required in accordance with ~~Rules~~ **R 325.50**117 to **R 325.50**119.

(c) The purpose for and a description of the medical surveillance program required by ~~Rules~~ **R 325.50**123 to **R 325.50**127, including information on the occupational safety and health hazards associated with exposure to coke oven emissions.

(d) A review of all written procedures and schedules required under ~~Rules~~ **R 325.50**106 to **R 325.50**116.

(e) A review of these rules.

R 325.50129 Access to training materials.

Rule 129. (1) An employer shall make a copy of these rules, **and its appendixes,** the substance information sheet, and the air monitoring and medical surveillance guide for coke oven emissions, readily available to all persons employed in the regulated area.

(2) An employer shall provide, upon request, all materials relating to the employee information and training program to the director.

HAZARD COMMUNICATION

R 325.50129a Communication of hazards.

Rule 129a. (1) An employer shall include coke oven emissions in the program established to comply with the Occupational Health Standard Part 430 "Hazard Communication," as referenced in R 325.51401a.

(2) An employer shall ensure that each employee has access to labels on containers of chemicals and substances associated with coke oven processes and to safety data sheets, and is trained in accordance with R 325.50128 and the provisions of Occupational Health Standard Part 430 "Hazard Communication," as referenced in R 325.50102a.

(3) An employer shall ensure that, at least, the hazard of cancer is addressed.

R 325.50130 Precautionary signs and labels.

Rule 130. **(1) An employer shall post signs in the regulated area bearing the legend:**

DANGER **COKE OVEN EMISSIONS** **MAY CAUSE CANCER** **DO NOT EAT, DRINK OR SMOKE** **WEAR RESPIRATORY PROTECTION IN THIS AREA** **AUTHORIZED PERSONNEL ONLY**

(2) An employer shall post signs in the areas where the permissible exposure limit is exceeded bearing the legend:

WEAR RESPIRATORY PROTECTION IN THIS AREA

(3)~~(1)~~ An employer shall ~~assure~~ **ensure** that a statement does not appear on or near any sign required by these rules which contradicts or detracts from the effects of the required sign.

(4)~~(2)~~ An employer shall ~~assure~~ **ensure** that signs required by these rules are illuminated and cleaned as necessary so that the legend is readily visible.

(5)(3) **Prior to June 1, 2016, employers may use the following legend in lieu of that specified in subrule (1) of this rule:** ~~An employer shall post signs in the regulated area bearing the following legends:~~

DANGER CANCER HAZARD AUTHORIZED PERSONNEL ONLY NO SMOKING OR EATING

(6)~~(4)~~ Prior to June 1, 2016, employers may use the following legend in lieu of that specified in **subrule (2) of this rule:** ~~In addition, the employer shall post signs in the areas where the permissible exposure limit is exceeded bearing the legend~~:

DANGER RESPIRATOR REQUIRED

(7) An employer shall ensure that labels of containers of contaminated protective clothing and equipment include the following information:

CONTAMINATED WITH COKE EMISSIONS MAY CAUSE CANCER DO NOT REMOVE DUST BY BLOWING OR SHAKING

(8)~~(5)~~ **Prior to June 1, 2015, employers may include the following information on contaminated protective clothing and equipment in lieu of the labeling requirements in subrule (7) of this rule:** ~~The employer shall apply precautionary labels to all containers of protective clothing contaminated with coke oven emissions bearing the following legend:~~

CAUTION CLOTHING CONTAMINATED WITH COKE EMISSIONS DO NOT REMOVE DUST BY BLOWING OR SHAKING

R 325.50131 **Recordkeeping, e**xposure measurements.

Rule 131. (1) An employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to coke oven emissions required in ~~Rule~~ **R 325.50**105.

(2) The record shall include all of the following:

(a) Name, social security number, and job classification of the employees monitored.

(b) The date or dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable.

(c) The type of respiratory protective devices worn, if any.

(d) A description of the sampling and analytical methods used and evidence of their accuracy.

(e) The environmental variables that could affect the measurement of employee exposure.

(3)~~(2)~~ An employer shall maintain this record for not less than 40 years or for the duration of employment plus 20 years, whichever period is longer.

R 325.50132 Medical records.

Rule 132. (1) An employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by ~~Rule~~ **R 325.50**123~~(1).~~ **to R 325.50137.**

(2) The record shall include all of the following:

(a) The name, social security number, and description of duties of the employee.

(b) A copy of the physician's written opinion.

(c) The signed statement of any refusal to take a medical examination under ~~Rule~~ **R 325.50**123(3).

(d) Any employee medical complaints related to exposure to coke oven emissions.

(3)~~(2)~~ An employer shall keep, or ~~assure~~ **ensure** that the examining physician keeps, all of the following medical records:

(a) A copy of the medical examination results, including medical and work history required under ~~Rule~~ **R 325.50**124. ~~(1)(a).~~

(b) A description of the laboratory procedures used and a copy of any standards or guidelines used to interpret the test results.

(c) The initial X-ray film.

(d) The X-ray films for the most recent 5 years.

(e) Any X-ray film with a demonstrated abnormality and all subsequent films.

(f) The initial cytologic examination slide and written description.

(g) The cytologic examination slides and written descriptions for the most recent 10 years.

(h) Any cytologic examination slides with demonstrated atypia, if such atypia persists for 3 years, and all subsequent slides and written descriptions.

(3) ~~The~~ **An** employer shall maintain medical records required under this rule for not less than 40 years, or for the duration of employment plus 20 years, whichever period is longer.

R 325.50133 Availability of records.

Rule 133. (1) An employer shall make available upon request all records required to be maintained by ~~Rules~~ **R 325.50**131 to **R 325.5034** ~~132~~ to the director for examination and copying.

(2) An employer shall make available, upon request, records of employee exposure measurements required by ~~Rule~~ **R 325.50**131 for inspection and copying to affected employees and their designated representatives.

(3) An employer shall make available upon request employee medical records required to be maintained by ~~Rule~~ **R 325.50**132 to a physician designated by the affected employee or former employee.

(4) An employer shall make available upon request records of employee exposure measurements required by ~~Rule~~ **R 325.50**131 for inspection and copying to former employees and their designated representatives which indicate the former employees' own exposures.

(5) Employee exposure measurement records and employee medical records required by these rules shall be provided upon request to employees, designated representatives, and the director in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.50102a.

R 325.50134 ~~Transfer of records~~ **Retention and transfer of records**.

Rule 134. (1) If an employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by ~~Rules~~ **R 325.50**131 **to R 325.50134.** ~~and 132~~.

~~(2) If an employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted by registered mail to the director.~~

~~(3) At the expiration of the retention period for the records required to be maintained under Rules 131 and 132, an employer shall transmit the records by registered mail to the director or shall continue to retain such records.~~

(2) An employer shall comply with any additional requirements involving the transfer of records set forth in Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.50102a.

R 325.50135 Observations of monitoring.

Rule 135. (1) An employer shall provide affected employees or their representatives an opportunity to observe any measuring or monitoring of employee exposure to coke oven emissions conducted pursuant to ~~Rule~~ **R 325.50**105.

(2) If observation of the measuring or monitoring of employee exposure to coke oven emissions requires entry into an area where the use of protective clothing or equipment is required, an employer shall provide the observer with, and assure the use of, such equipment and shall require the observer to comply with all other applicable safety and health procedures.

(3) Without interfering with the measurement, an observer shall be entitled to all of the following:

(a) An explanation of the measurement procedures.

(b) Observe all steps related to the measurement of coke oven emissions performed at the place of exposure.

(c) Record the results obtained.

R 325.50136 **Rescinded**. ~~Availability of rules, information sheets, and guides~~

~~Rule 136. (1) A copy of these rules, the substance information sheet, and the air monitoring and medical surveillance guides for coke oven emissions shall be provided to each employer by the Michigan Department of Consumer and Industry Services, P.O. Box 30643, Lansing, Michigan 48909.~~

~~(2) Permission to reproduce each or all of these documents in full is granted by the director~~

OPINIONS OF THE ATTORNEY GENERAL

MCL 14.32 states in part:

"It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer"

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(j) Attorney general opinions. "

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

MICHIGAN MEDICAL MARIHUANA ACT:	Application of Michigan Medical Marihuana Act to child-protective proceedings
MICHIGAN JUVENILE CODE:	
CUSTODY:	

A properly registered patient or primary caregiver, who engages in the "medical use" of marihuana "in accordance with" the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, may invoke the protections provided in sections 4(a) and (b) of the Act in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*. MCL 333.26424(a) and (b). But the protections are subject to the exception in section 4(c) of the MMMA for behavior that creates an unreasonable danger to a minor that can be clearly articulated and substantiated. MCL 333.26424(c).

Whether a person's actions associated with the medical use of marihuana present an "unreasonable danger" to a child under section 4(c) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(c), is a fact-specific inquiry dependent upon the circumstances of each case. Any assertion that a person's behavior associated with the medical use of marihuana presents an unreasonable danger to a child must be clearly expressed and supported by evidence.

To invoke the protections provided for in sections 4(a) and (b) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(a) and (b), in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*., a patient or primary caregiver must have been issued and possess a valid registry identification card. The affirmative defense provided for in section 8(a) of the MMMA only applies in a criminal prosecution, and thus is not available in a child-protective proceeding under the Juvenile Code. MCL 333.264248(a).

The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, does not permit a court in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq*., to independently determine whether a person is a qualifying patient. But the court may review evidence to determine whether a person's conduct related to marihuana is for the purpose of treating or alleviating the person's debilitating medical condition or symptoms associated with the condition. MCL 333.26424(d)(2). If the person's use or possession of marihuana is not for that purpose, and thus not "in accordance with" the MMMA, the person is not entitled to invoke the protections offered in section 4(a) in a child-protective proceeding. MCL 333.26424(a), MCL 333.26427(a).

Opinion No. 7271 May 10, 2013

Honorable Rick Jones
State Senator
The Capitol
Lansing, MI 48909

You ask several questions concerning the application of the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, in child-protective proceedings brought under the Michigan Juvenile Code (Juvenile Code), MCL 712A.1 *et seq.*[1]

I.

You first ask whether an individual in a child-protective proceeding brought under the Juvenile Code may invoke the protections provided under the MMMA relating to the medical use of marihuana.

The purpose of the Juvenile Code is to serve a child's welfare. MCL 712A.1(3); MCR 3.902(B)(1); *In re Jagers*, 224 Mich App 359, 362; 568 NW2d 837 (1997). And consistent with that purpose, child-protective proceedings protect children from unfit homes and possible injury or mistreatment, and thus safeguard their physical, mental, and emotional well-being. *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993); *In re Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980). A child-protective proceeding is initiated by filing a petition that sets forth "[t]he essential facts that constitute an offense against the child under the Juvenile Code." MCR 3.961(B)(3). The court acquires subject-matter jurisdiction when the allegations in the petition are not frivolous, and the court may thereafter exercise jurisdiction upon finding probable cause to believe the allegations within the petition are true. *In re Hatcher*, 443 Mich 426, 437-438; 505 NW2d 834 (1993). Subsequently, as explained in *In re Brock*, 442 Mich at 108, "[c]hild protective proceedings are generally divided into two phases: the adjudicative and the dispositional. The adjudicative phase determines whether the [ ]

court may exercise jurisdiction over the child. If the court acquires jurisdiction, the dispositional phase determines what action, if any, will be taken on behalf of the child."

To exercise continuing jurisdiction, the circuit court "must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *Id.* MCL 712A.2(b)(1) provides that a circuit court has jurisdiction over a child under the age of 18, whose parent or custodian "neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship." In addition, jurisdiction may be established under MCL 712A.2(b)(2) for those minors "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in." If continuing jurisdiction is established, "the [ ] court has several options, one of which is to return the children to their parents. Not every adjudicative hearing results in removal of custody." *In re Brock*, 442 Mich at 111 (citation omitted). In order to permanently terminate parental rights, the statutory grounds for termination must be proven by clear and convincing evidence. MCL 712A.19b(3).

The MMMA permits the medical use of marihuana "to the extent that it is carried out in accordance with the provisions of [the] act." MCL 333.26427(a), 333.26424(d)(1) and (2). Pursuant to section 7(e), "[a]ll other acts and parts of acts inconsistent with [the MMMA] do not apply to the medical use of marihuana as provided for by this act." MCL 333.26427(e). The Michigan Supreme

[1] In addition to the Juvenile Code, there are a number of other public acts that involve the care or custody of minors. Many of these acts are included in Chapter 722, Children, of the Probate Code of 1939. This opinion, however, addresses only child-protective proceedings under the Juvenile Code.

Court has explained that the purpose of the MMMA is to "allow a limited class of individuals the medical use of marijuana . . . . To meet this end, the MMMA defines the parameters of legal medical-marijuana use, promulgates a scheme for regulating registered patient use and administering the act, and provides for an affirmative defense, as well as penalties for violating the MMMA." *People v Kolanek*, 491 Mich 382, 393-394; 817 NW2d 528 (2012) (footnotes omitted). But the "MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan." *Id.* (emphasis in original).[1]

The MMMA provides that a qualifying patient or primary caregiver who has been issued and possesses a registry identification card "shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act." MCL 333.26424(a) and (b). See also 333.26424(d)(1) and (2), MCL 333.26427(a). The term "medical use" is broadly defined and includes the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana." MCL 333.26423(e).[2]

In addition to the general protection from arrest, prosecution, or other penalty provided for in sections 4(a) and (b), MCL 333.26424(a) and (b), the MMMA also provides an affirmative defense. Section 8(a), MCL 333.26428(a), states that "a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana *as a defense to any prosecution involving marihuana*."

[1] All marijuana-related activity in Michigan remains prohibited by the federal Controlled Substances Act, 21 USC 812(c), 823(f), and 844(a), regardless of whether the individual is registered under the MMMA.

[2] A qualifying patient with a valid registry identification card may possess up to 2.5 ounces of usable marihuana, and cultivate up to 12 marihuana plants, unless the patient has designated a primary caregiver and specified that the caregiver will cultivate marihuana for the patient. MCL 333.26424(a). A primary caregiver who has a valid registration card may assist up to 5 patients and possess up to 2.5 ounces of usable marihuana per patient to whom the caregiver is connected by registration, and may also cultivate 12 marihuana plants per patient if the patient has so specified. MCL 333.26424(b) and 333.26426(d).

(Emphasis added.) And relevant to your question, the MMMA includes a specific provision concerning child custody and visitation:

> A person *shall not be denied* custody or visitation of a minor for *acting in accordance with* this act, *unless* the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated. [MCL 333.26424(c); emphasis added.] [1]

You ask whether an individual may invoke section 4(c), MCL 333.26424(c), in a child-protective proceeding under the Juvenile Code.

"[B]ecause the MMMA was the result of a voter initiative, [the] goal is to ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself. We must give the words of the MMMA their ordinary and plain meaning as would have been understood by the electorate." *Kolanek*, 491 Mich at 397. See also *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). And when construing a statute, the provision must be read in context with the entire statute, and any construction that would render any part of a statute surplusage or nugatory should be avoided. *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010).

While your question suggests that section 4(c) provides an independent source of immunity or protection that is not the function of the provision. Rather, as explained below, section 4(c) creates an exception to the immunity or protection provided in sections 4(a) and (b) that would otherwise apply in a child-protective proceeding.

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[1] The medical marihuana laws of Arizona, Delaware, and Maine include a provision similar to Michigan's section 4(c). See Ariz Rev Stat Ann, section 36-2813(D); Del Code Ann tit 16, section 4905A(b); Me Rev Stat Ann tit 22, section 2423-E(3).

As noted above, sections 4(a) and (b) provide that registered patients and primary caregivers shall not be subject to "*penalty in any manner*, or [be] *denied any right or privilege*, including but not limited to civil penalty . . . for the medical use of marihuana *in accordance with this act*." MCL 333.26424(a) and (b) (emphasis added). The broad language of these provisions must reasonably be understood to encompass proceedings involving child custody or visitation issues. The United States Supreme Court has held that parents have a right to the "companionship, care, custody, and management" of their children. *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972). And the Michigan Supreme Court has stated that "[i]t is well established that parents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of 'liberty' to be protected by due process." *In re Brock*, 442 Mich at 109.

An order or judgment in a child-protective proceeding under the Juvenile Code that imposes restrictions on custody or visitation, requires the removal of a child from a home, or results in the termination of parental rights, plainly results in the "denial" of a "right or privilege" for purposes of sections 4(a) and (b) of the MMMA. Thus, registered patients and primary caregivers may invoke the protection or immunity provided for in sections 4(a) and (b) in a child-protective proceeding under the Juvenile Code. But they may do so *only* if they are properly registered as patients or primary caregivers, possess a registration card, and their "medical use" of marihuana was "in accordance with the act." MCL 333.26424(a) and (b).

But this immunity is not absolute. Again, section 4(c) provides: "[1] A person shall not be denied custody or visitation of a minor for acting in accordance with this act, [2] *unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and*

substantiated." (Emphasis added.) The first clause of this provision simply echoes the protection or immunity afforded registered patients and primary caregivers under sections 4(a) and (b). But the second clause creates an exception or limitation to that protection where the patient's or primary caregiver's medical use of marihuana "creates an unreasonable danger to the minor that can be clearly articulated and substantiated."[1] In other words, a registered patient or primary caregiver will lose the immunity accorded their medical use of marihuana, thereby allowing the marihuana use to be used as a basis to restrict or deny custody or visitation with a child, if the use creates an unreasonable danger to the child. This result is no different than what would occur where participation in any other lawful activity by a parent or caregiver creates an unreasonable risk of harm to a child.

It is my opinion, therefore, that a properly registered patient or primary caregiver, who engages in the "medical use" of marihuana "in accordance with" the MMMA, may invoke the protections provided in sections 4(a) and (b) of the Act in a child-protection proceeding under the Juvenile Code. MCL 333.26424(a) and (b). But the protections are subject to the exception in section 4(c) of the MMMA for behavior that creates an unreasonable danger to a minor that can be clearly articulated and substantiated. MCL 333.26424(c).

II.

In relation to your first question, you express concern with the lack of guidance as to "what would constitute an unreasonable danger to the minor that can be clearly articulated and substantiated" for purposes of the exception created by section 4(c), MCL 333.26424(c).

[1] Section 4(c) applies to a "person" "acting in accordance with" the MMMA, MCL 333.26424(c), and is not limited to patients or primary caregivers. Thus, a "person" acting in accordance with sections 4(g), MCL 333.26424(g), relating to "marihuana paraphernalia," and 4(i), MCL 333.26424(i), relating to a person assisting in the administration of marihuana, would also be subject to the exception or limitation set forth in section 4(c). Presumably, however, most situations will

Again, section 4(c) creates an exception to the protection available under sections 4(a) and (b) where the patient's or primary caregiver's "behavior is such that it creates an *unreasonable danger* to the minor that can be clearly *articulated and substantiated*." MCL 333.26424(c) (emphasis added). The MMMA does not define the terms "unreasonable danger" or "articulated and substantiated," nor has any court issued a decision expressly interpreting the application of section 4(c).[1]

Turning first to the term "unreasonable danger," no other Michigan statute defines or uses this same phrasing in a sufficiently similar context to be helpful. Moreover, it is reasonable to assume that the term was left undefined because what will constitute an "unreasonable danger" to a child will require a fact-specific inquiry based on the particular circumstances of each case. The courts already conduct a similar inquiry under the Child Protection Law (CPL), 1975 PA 238, MCL 722.621 *et seq*.[2] Under section 18(1) of the CPL, the Department of Human Services must file a petition under the Juvenile Code if it determines that someone residing in a child's home is abusing a child or a sibling of the child. MCL 722.638(1)(a). And under section 18(2), "if a parent is a suspected perpetrator or is suspected of placing the child at an *unreasonable risk of harm* due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under" the Juvenile Code. MCL 722.638(2). Like the

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involve patients or primary caregivers, and for purposes of this question, it is assumed that the person in question is a patient or primary caregiver.

[1] The Michigan Court of Appeals has issued several decisions in parental termination of rights cases that note the medical use of marihuana by a parent, but none specifically address or interpret section 4(c). See *In re Niblock*, unpublished opinion per curiam of the Court of Appeals, decided May 8, 2012 (Docket Nos. 306612, 306954); *In re Homister*, unpublished opinion per curiam of the Court of Appeals, decided February 16, 2012 (Docket No. 305448); *In re Amormino*, unpublished opinion per curiam of the Court of Appeals, decided November 15, 2011 (Docket Nos. 303172, 303216); *In re McEachern*, unpublished opinion per curiam of the Court of Appeals, decided September 1, 2011 (Docket Nos. 300601, 303176); *In re MJM*, unpublished opinion per curiam of the Court of Appeals, decided June 7, 2011 (Docket Nos. 299893, 299894).

[2] The broad purpose of the CPL is to prevent child abuse and neglect. *Becker-Witt v Bd of Examiners of Social Workers*, 256 Mich App 359, 364; 663 NW2d 514 (2003), citing *Williams v Coleman*, 194 Mich App 606, 614-615; 488 NW2d 464 (1992). To effectuate that purpose, the act defines conduct that is abusive or neglectful, and establishes methods for the reporting to, and the investigation of, instances of abuse and neglect by the Department of Human Services. See, e.g.,

MMMA, the CPL does not define "unreasonable risk of harm"; rather, the Department and any reviewing court must make an assessment based on the circumstances of the case.

In making such an assessment, the Department of Human Services has issued guidance regarding drug or controlled substance use by a parent or caregiver, which includes medical marihuana. The Department's policy provides that:

> Substance abuse, or the addiction of the parent-caretaker or adult living in the home to alcohol or drugs, does not in and of itself constitute evidence of abuse or neglect of the child. Parents use drugs (including, but not limited to, legally or illegally obtained controlled drugs such as *medically prescribed marijuana*, methadone, pain-killers and anti-depressants) and/or alcohol to varying degrees and many remain able to care for their child without harming the child. A careful evaluation must be made to determine whether a child is at risk. [Children Protective Services Manual, PSM 716-7; p 1; PSB 2012-004 (7-1-2012); emphasis added.]

This policy is consistent with the MMMA, and may be applied where a parent or caregiver, who is also a registered patient, invokes the protection provided by sections 4(a) or (b). In other words, under the terms of the MMMA, the medical use of marihuana alone does not create an unreasonable danger to a child. But if the marihuana use affects the parent or caregiver's ability to adequately care for a child, or if the marihuana use presents a particular danger, say to an asthmatic child, such circumstances could create an unreasonable danger to the child. See, e.g. *In re Alexis E.*, 90 Cal Rptr 3d 44, 54 (2009) ("While it is true that the mere use of marijuana by a parent will not support a finding of risk to minors, the risk to the minors here is not speculative. There is a risk to the children of the negative effects of secondhand marijuana smoke.") (citations omitted). See also David Malleis, Note, *The High Price of Parenting High: Medical Marijuana and its Effects on Child Custody Matters*, 33 U La Verne L Rev 357 (2012). A careful evaluation of the facts and circumstances of each case must be made to determine whether the parent's or caregiver's behavior poses an unreasonable danger to the

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Michigan Ass'n of Intermediate Special Educ Administrators v Dep't of Social Services, 207 Mich App 491; 526 NW2d 36 (1994).

child in question. This conclusion is consistent with how a parent's or caregiver's use of other drugs or controlled substances is to be treated.

The MMMA also requires that the unreasonable danger be "articulated and substantiated." MCL 333.26424(c). Again, these terms are not defined within the MMMA.[1] When a term is not defined in the statute it should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). In this context, the term "articulated" means "[t]o express in coherent verbal [or written] form; give words to." *The American Heritage College Dictionary, Third Edition* (1997). The term "substantiated" means
"[t]o support with proof or evidence; verify." *Id*.[2] Applying these definitions to section 4(c), the bases for asserting that a parent's medical use of marihuana presents an unreasonable danger to the child must (1) be clearly expressed, and (2) supported with evidence. With respect to a child-protective proceeding under the Juvenile Code, depending upon whether the proceeding is in the adjudicative or dispositional phase, the unreasonable danger must be "substantiated" or supported by either a preponderance of the evidence (adjudicative phase), or by clear and convincing evidence (dispositional phase). See *In re Brock*, 442 Mich at 108, 111-112; MCR 3.972(C)(1); MCR 3.977(E)(3), (F)(1)(b), and (H)(3)(a).[1]

It is my opinion, therefore, that whether a person's actions associated with the medical use of marihuana present an "unreasonable danger" to a child under section 4(c) of the MMMA is a fact-

[1] Unlike Michigan, two of the other three states that have provisions similar to section 4(c), see footnote 4, *supra*, incorporate a "clear and convincing evidence" standard. See Ariz Rev Stat Ann, section 36-2813(D) and Del Code Ann tit 16, section 4905A(b).

[2] The CPL includes an express definition of the term "substantiated" for purposes of child abuse and neglect cases. See MCL 722.622(d) and (aa), and MCL 722.628d(1)(d) and (e). This opinion's definition of the term "substantiated" for purposes of applying section 4(c) of the MMMA does not otherwise replace the definition set forth in the CPL.

specific inquiry dependent upon the circumstances of each case. MCL 333.26424(c). Any assertion that a person's behavior associated with the medical use of marihuana presents an unreasonable danger to a child must be clearly expressed and supported by evidence.

III.

You next ask whether an individual must be issued and possess a registry identification card under the MMMA in order to raise an affirmative defense under MCL 333.26428(a) or invoke statutory immunity under MCL 333.26424(a) and (b) in a child-protective proceeding under the Juvenile Code.

With respect to section 8's affirmative defense,[2] by its own terms the provision only applies to a criminal "*prosecution* involving marihuana." MCL 333.26428(a) (emphasis added); *State v McQueen*, 493 Mich 135, 159; 828 NW2d 644 (2013). Child-protective proceedings are civil actions, not criminal prosecutions. MCL 712A.1(2); *In re Stricklin*, 148 Mich App 659, 666; 384 NW2d 833, lv den 425 Mich 856 (1986). Thus, section 8(a) may not be invoked in child-protective proceedings brought under the Juvenile Code.

Sections 4(a) and (b) each expressly require that a patient or primary caregiver be registered and possess a registry identification card in order to invoke the immunity or protections provided therein. A patient or primary caregiver "who has been *issued and possesses a registry identification card* shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional

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[1] However, for Native American children, the burden of proof is beyond a reasonable doubt. MCR 3.977(G)(2).

[2] An affirmative defense "'admits the doing of the act charged, but seeks to justify, excuse, or mitigate it. . . .' It does not 'negate selected elements or facts of the crime.'" *People v Lemons*, 454 Mich 234, 246 n 15; 562 NW2d 447 (1997) (citations omitted); see also *Kolanek*, 491 Mich 382, *supra*.

licensing board or bureau," for the medical use of marihuana or for assisting a patient in the medical use of marihuana. MCL 333.26424(a) and (b) (emphasis added).[1]

It is my opinion, therefore, that to invoke the protections provided for in sections 4(a) and (b) of the MMMA in a child-protective proceeding under the Juvenile Code, a patient or primary caregiver must have been issued and possess a valid registry identification card. MCL 333.26424(a) and (b). The affirmative defense provided for in section 8(a) of the MMMA only applies in a criminal prosecution, and thus is not available in a child-protective proceeding under the Juvenile Code. MCL 333.264248(a).

IV.

Finally, you ask whether a trial court has authority within the context of a child-protective proceeding under the Juvenile Code, to independently determine whether a person is a "qualifying patient" with a "debilitating condition" under the MMMA, by either ordering the person to release his or her medical records to the court or to participate in an independent medical assessment.

Under MCL 712A.6, a court has jurisdiction over an adult and may make orders affecting the adult that, in the opinion of the court, are necessary for the physical, mental, or moral well-being of a child under the court's jurisdiction. See also MCL 712A.6b (orders regarding nonparent adults). A court may compel adults to participate in services necessary for a child's welfare as set forth in an initial service plan. MCR 3.973(F)(2). And, specific to your question, the "[t]he court may order that a minor or a parent, guardian, or legal custodian be examined or evaluated by a physician, dentist, psychologist, or psychiatrist." MCR 3.923(B); *In re Johnson*, 142 Mich App 764, 766; 371 NW2d 446 (1985). Consistent with state and federal law, medical records for a parent, guardian, or legal custodian may be

[1] Under section 9(b), MCL 333.26429(b), a valid application for a registry identification card will be "deemed" a "registry identification card" if a card is not issued within 20 days of submission of the application.

obtained through execution of a voluntary release, 42 USC 290dd-2(b)(1), or by subpoena, 42 USC 290dd-2(b)(2)(C). See also MCL 722.631, MCR 3.973(E)(1), and 45 CFR 164.512(e)(1)(i) - (ii)(A) or (B).

Although a court may order these evaluations and receive into evidence any medical records pertaining to members of a child's household, nevertheless the MMMA does not permit the court to independently determine whether a person is a qualifying patient.

The MMMA defines a "qualifying patient" as "a person who has been diagnosed by a physician as having a debilitating medical condition." MCL 333.26423(h).[1] The MMMA defines the term "debilitating medical condition" to include a number of conditions and their symptoms. MCL 333.26423(a).[2] To enjoy full protection under the MMMA, as discussed above, a patient must apply for and obtain a "registry identification card." MCL 333.26424(a).[3] To receive a

[1] A "physician" must be licensed "under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556." MCL 333.26423(f).

[2] The MMMA defines "[d]ebilitating medical condition" to mean "1 or more of the following":

> (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.
>
> (2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.
>
> (3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a). [MCL 333.26423(a)(1) – (3).]

[3] "Registry identification card" means "a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver." MCL 333.26423(i). As enacted, the reference to "department" meant the Department of Community Health. MCL 333.26423(b). However, the duties and functions relating to the medical marihuana program were transferred from that department to the Department of Licensing and Regulatory Affairs.

registry identification card, a patient must obtain a "written certification" from a physician, which is defined as:

> [A] document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. [MCL 333.26423(*l*).]

The patient must then complete and file an application with the Michigan Department of Licensing and Regulatory Affairs (Department). MCL 333.26426(a). The Department must verify the information contained in the application and must approve the application if the patient's submission is complete. MCL 333.26426(a) and (c). The Department may only deny an application if it is incomplete, "or if the department determines that the information provided was falsified." MCL 333.26426(c). The Department's denial of an application is subject to judicial review in the Ingham County Circuit Court. MCL 333.26426(c).

A patient who completes this process, receives a registry identification card, and is otherwise in compliance with the MMMA is entitled to a rebuttable presumption that the patient's use and possession of marihuana is for a medical purpose:

> (d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:
>
> (1) is in possession of a registry identification card; and
>
> (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. *The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.* [MCL 333.26424(d)(1) and (2); (emphasis added).]

Under this process, a licensed physician diagnoses a patient with a qualifying debilitating medical condition and certifies that the patient will benefit from the medical use of marihuana. If the patient obtains this certification and properly submits an application to the Department, the patient is entitled to a registry identification card. The MMMA does not authorize or otherwise provide an opportunity for the courts to decide whether someone is qualified for registration as a patient under the MMMA.

Rather, what a court may do is entertain "evidence" that a patient's use of marihuana "was not for the purpose of alleviating" the patient's "debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26424(d). Thus, the court could order the person to undergo a medical examination, procure the patient's medical records,[1] and review any other evidence, including testimony, regarding the person's use of marihuana to determine whether the person's conduct relating to marihuana is for the purpose of treating or alleviating the person's debilitating condition or associated symptoms. If the evidence supports a contrary conclusion, then the court can determine that the person's use or possession of marihuana is not "in accordance with" the MMMA and the person is not entitled to the Act's protections in the context of a child-protective proceeding under the Juvenile Code. MCL 333.26424(a) and MCL 333.26427(a).

It is my opinion, therefore, that the MMMA does not permit a court in a child-protective proceeding under the Juvenile Code, to independently determine whether a person is a qualifying

[1] Notably, the MMMA imposes confidentiality rules regarding information relating to patients and primary caregiver:

> (1) *Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.*
>
> (2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. [MCL 333.26426(h)(1) and (2); emphasis added.]

patient. But the court may review evidence to determine whether a person's conduct related to marihuana is for the purpose of treating or alleviating the person's debilitating medical condition or symptoms associated with the condition. MCL 333.26424(d)(2). If the person's use or possession of marihuana is not for that purpose, and thus not "in accordance with" the Act, the person is not entitled to invoke the protections offered in section 4(a) in a child-protective proceeding. MCL 333.26424(a), MCL 333.26427(a)

BILL SCHUETTE
Attorney General

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

MCL 24.256(1) states in part:

"Sec. 56. (1) The Office of Regulatory Reform shall perform the editorial work for the Michigan register and the Michigan Administrative Code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the Office of Regulatory Reform, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The Office of Regulatory Reform may correct in the publications obvious errors in rules when requested by the promulgating agency to do so…"

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

March 8, 2013

Mr. Rob Nederhood
Office of Regulatory Reinvention
George W. Romney Building
111 S. Capitol Avenue
Lansing, Ml 48933

Dear Mr. Nederhood:

We currently have a Rule Set, Farmland and Open Space Preservation, that is awaiting final publication in the Michigan Register. However, we need to make a correction to an obvious error under MCL 24.256(1), thereby obviating the need for formal and costly rulemaking.

Rule Set Farmland and Open Space Preservation

Under Part 2. Eligible Lands, we have rescinded Rules 21 and 22 but when preparing the strike-bold language for publication, the words "**Rule 21" and "Rule 22**" were not struck out with the remainder of each of the rule sections. Therefore, the Farmland and Open Space Preservation regulation should be amended to correct the obvious error to read:

R 554.721 Rescinded. R 544.722 Rescinded

We would ask that you make this correction under MCL 24.256 and publish it in Michigan Register and Michigan Administrative Code.

Brad Deacon
Department of Agriculture and Rural Development

OTHER OFFICIAL INFORMATION

MCL 24.208 states in part:

Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(i) Other official information considered necessary or appropriate by the office of regulatory reinvention.

OTHER OFFICIAL INFORMATION

May 7, 2013

Kevin Elsenheimer
Director
Office of Regulatory Reinvention
Department of Licensing and Regulatory Affairs
Ottawa Building- 2nd Floor
611 W. Ottawa St. Lansing, MI 48909

Dear Mr. Elsenheimer:

Rules promulgated under Section 2b of 1943 PA 148, the Proprietary School Act, MCL 395.102b, have been rendered obsolete by section 5 of 1963 PA 40, which repealed the former, Section 2b, MCL 395.102b, pertaining to solicitor's permit for private trade schools and institutes.

The Department of Licensing and Regulatory Affairs is writing the Office of Regulatory Reinvention to request corrections to the Administrative Code be made, pursuant to the Administrative Procedures Act, Section 31(2), MCL 24.231 and, Section 56(1), MCL 24.256.

We request the following administrative rules be rescinded, effective immediately:

- Rule- Solicitors of Private Trade Schools and Institutes, (R 390.671).

If you have any questions, please contact me at 517-335-2626.

Sincerely,

Eliz,dth Arasim Regulatory Affairs Officer Department of Licensing and Regulatory Affairs

cc: Al Schefke, CS&CL Ann Baker, CS&CL

MICHIGAN ADMINISTRATIVE CODE TABLE
(2013 SESSION)

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(i) Other official information considered necessary or appropriate by the Office of Regulatory Reform."

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

MICHIGAN ADMINISTRATIVE CODE TABLE
(2013 RULE FILINGS)

R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue
29.2901	A	5	205.1111	R	6	205.1288	R	6
29.2902	A	5	205.1115	R	6	205.1290	R	6
29.2903	A	5	205.1120	R	6	205.1301	R	6
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29.2910	A	5	205.1155	R	6	205.1317	R	6
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29.2914	A	5	205.1208	R	6	205.1333	R	6
29.2915	A	5	205.1210	R	6	205.1335	R	6
29.2916	A	5	205.1215	R	6	205.1340	R	6
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29.2918	A	5	205.1222	R	6	205.1345	R	6
29.2919	A	5	205.1225	R	6	205.1348	R	6
29.2920	A	5	205.1228	R	6	209.1	*	5
29.2921	A	5	205.1230	R	6	209.31	*	5
29.2922	A	5	205.1235	R	6	285.138.1	R	5
29.2923	A	5	205.1240	R	6	299.3301	R	2
29.2924	A	5	205.1245	R	6	299.3302	R	2
29.2925	A	5	205.1247	R	6	299.3303	R	2
29.2926	A	5	205.1249	R	6	299.3304	R	2
205.5	R	8	205.1250	R	6	299.3305	R	2
205.9	R	8	205.1252	R	6	299.3306	R	2
205.23	R	8	205.1255	R	6	299.3307	R	2
205.1	*	8	205.1257	R	6	299.3308	R	2
205.8	*	8	205.1260	R	6	299.3309	R	2
205.15	*	8	205.1264	R	6	299.3310	R	2
205.16	*	8	205.1270	R	6	299.3311	R	2
205.20	*	8	205.1275	R	6	299.3312	R	2
205.22	*	8	205.1278	R	6	299.3313	R	2
205.26	*	8	205.1280	R	6	299.3314	R	2
205.28	*	8	205.1281	R	6	299.3315	R	2
205.136	*	8	205.1283	R	6	299.3316	R	2
205.1101	R	6	205.1285	R	6	299.3317	R	2

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue
299.3318	R	2	324.1506	R	2	325.5681	A	8
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299.5105	R	2	324.1508	R	2	325.5683	A	8
299.5107	R	2	324.1509	R	2	325.5684	A	8
299.5109	R	2	324.1509a	R	2	325.5685	A	8
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299.5403	R	2	325.5603	*	8	325.5690	A	8
299.5405	R	2	325.5605	*	8	325.5691	A	8
299.5407	R	2	325.5607	*	8	325.5692	A	8
299.5409	R	2	325.5608	*	8	325.5693	A	8
299.5411	R	2	325.5610	*	8	325.5694	A	8
299.5413	R	2	325.5611	*	8	325.5695	A	8
299.5415	R	2	325.5612	*	8	325.5696	A	8
299.5530	R	2	325.5613	*	8	325.5697	A	8
299.5532	R	2	325.5637	*	8	325.5698	A	8
299.5534	R	2	325.5655	*	8	325.5617	R	8
299.5536	R	2	325.5656	*	8	325.5618	R	8
299.5538	R	2	325.5601a	A	8	325.5619	R	8
299.5540	R	2	325.5626	A	8	325.5621	R	8
299.5732	R	2	325.5627	A	8	325.5622	R	8
299.5742	R	2	325.5628	A	8	325.5623	R	8
299.5901	R	2	325.5629	A	8	325.5624	R	8
299.5903	R	2	325.5630	A	8	325.5625	R	8
299.5905	R	2	325.5634	A	8	325.5631	R	8
299.5907	R	2	325.5635	A	8	325.5632	R	8
299.5909	R	2	325.5357	A	8	325.5633	R	8
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324.1504	R	2	325.5679	A	8	325.5646	R	8
324.1505	R	2	325.5680	A	8	325.5647	R	8

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue
325.5648	R	8	325.50328	R	7	338.7	*	6
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325.5660	R	8	325.50334	R	7	338.3208	R	5
325.5661	R	8	325.50335	R	7	338.3218	R	5
325.5662	R	8	325.50336	R	7	338.3219	R	5
325.5663	R	8	325.50337	R	7	338.3220	R	5
325.5664	R	8	325.50338	R	7	338.3221	R	5
325.5665	R	8	325.50339	R	7	338.3231	R	5
325.50301	*	7	325.50340	R	7	338.3232	R	5
325.50303	*	7	325.50341	R	7	338.3233	R	5
325.50304	*	7	325.50342	R	7	338.3234	R	5
325.50302	R	7	325.50343	R	7	338.3235	R	5
325.50305	R	7	325.50344	R	7	338.3236	R	5
325.50306	R	7	325.50345	R	7	338.3238	R	5
325.50307	R	7	325.50346	R	7	338.3239	R	5
325.50308	R	7	325.50347	R	7	338.3241	R	5
325.50309	R	7	325.50348	R	7	338.3242	R	5
325.50310	R	7	325.51101	*	6	338.3243	R	5
325.50311	R	7	325.51105	*	6	338.3251	R	5
325.50312	R	7	325.51108	*	6	338.3252	R	5
325.50313	R	7	325.51101a	A	6	338.3253	R	5
325.50314	R	7	325.51190	*	7	338.3254	R	5
325.50315	R	7	325.51143	R	7	338.3255	A	5
325.50316	R	7	325.60151	*	6	338.3256	A	5
325.50317	R	7	325.60154	*	6	338.3257	R	5
325.50318	R	7	325.60155	*	6	338.3258	R	5
325.50319	R	7	325.60156	*	6	338.3259	R	5
325.50320	R	7	325.60157	*	6	338.3261	R	5
325.50321	R	7	325.60158	*	6	338.3262	R	5
325.50322	R	7	325.60159	*	6	338.3263	R	5
325.50323	R	7	325.60160	*	6	338.3264	R	5
325.50324	R	7	325.60161	*	6	338.3265	R	5
325.50325	R	7	325.60151a	A	6	338.3266	R	5
325.50326	R	7	336.1310	*	6	338.3267	R	5
325.50327	R	7	336.1330	R	6	338.3268	R	5

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue
338.3269	R	5	339.22507	R	5	408.10807	*	1
338.3270	R	5	339.22509	R	5	408.10823	*	1
338.3281	R	5	339.22511	R	5	408.10914	*	1
338.3282	R	5	339.22513	R	5	408.10925	*	1
338.3283	R	5	339.22515	R	5	408.10999	*	1
338.3284	R	5	339.22517	R	5	408.11432	*	6
338.3291	R	5	339.22519	R	5	408.11431	R	6
338.3292	R	5	339.22521	R	5	408.11434	R	6
338.3295	R	5	339.22523	R	5	408.11724	*	6
338.3301	R	5	339.22525	R	5	408.11725	*	6
338.3302	R	5	339.22527	R	5	408.12216	*	7
338.3303	R	5	339.22529	R	5	408.12217	*	7
338.3304	R	5	339.23101	*	5	408.12218	*	7
338.3307	R	5	339.23102	*	5	408.12220	*	7
338.3311	R	5	340.1121	*	6	408.12242	*	7
338.3312	R	5	340.1122	*	6	408.12202	A	7
338.3313	R	5	340.1123	R	6	408.12231	R	7
338.3314	R	5	340.1124	R	6	408.13811	*	7
338.3317	R	5	390.67100	R	9	408.13812	*	7
338.3321	R	5	400.400	R	6	408.13822	*	7
338.3324	R	5	400.410	R	6	408.13847	*	7
338.3327	R	5	400.411	R	6	408.13865	*	7
338.3331	R	5	408.43b	*	9	408.13871	*	7
338.3332	R	5	408.43i	*	9	408.13881	*	7
338.3335	R	5	408.48	*	5	408.13802	A	7
338.3341	R	5	408.59	*	5	408.14246	*	6
338.3345	R	5	408.10413	R	1	408.14263	*	6
338.3451	R	5	408.10421	*	1	408.14267	*	6
338.3455	R	5	408.10509	*	1	408.14269	*	6
338.3456	R	5	408.10541	*	1	408.14273	*	6
338.3461	R	5	408.10570	*	1	408.14231	R	6
338.3463	R	5	408.10579	*	1	408.14451	*	8
338.3464	R	5	408.10580	*	1	408.14476	*	8
338.3465	R	5	408.10582	*	1	408.15712	*	8
338.3466	R	5	408.10590	*	1	408.15713	*	8
338.23030	R	6	408.10761	R	1	408.15717	*	8
339.22501	R	5	408.10763	R	1	408.15721	*	8
339.22503	R	5	408.10765	*	1	408.15723	*	8
339.22505	R	5	408.10801	*	1	408.15725	*	8

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R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue	R Number	Action	2013 MR Issue
408.15726	*	8	408.30013	*	6	408.40631	*	6
408.15739	*	8	408.30016	*	6	408.40634	*	6
408.15802	*	8	408.30019	*	6	408.40635	*	6
408.15810	*	8	408.30022	*	6	408.40627	R	6
408.15815	*	8	408.30025	*	6	408.40632	R	6
408.15821	*	8	408.30028	*	6	408.40641	R	6
408.15831	*	8	408.30031	*	6	408.40709	*	6
408.15833	*	8	408.30034	*	6	408.40711	*	6
408.16511	*	6	408.30037	*	6	408.40712	*	6
408.16528	*	6	408.30040	*	6	408.40721	*	6
408.17125	R	6	408.30043	*	6	408.40722	*	6
408.17303	*	8	408.30046	*	6	408.40743	*	6
408.17310	*	8	408.30049	*	6	408.40744	*	6
408.17315	*	8	408.30052	*	6	408.40746	*	6
408.17318	*	8	408.30055	*	6	408.40751	*	6
408.17320	*	8	408.30002	A	6	408.40761	*	6
408.17403	*	8	408.40102	*	6	408.40714	R	6
408.17404	*	8	408.40114	*	6	408.40729	R	6
408.17405	*	8	408.40116	*	6	408.40742	R	6
408.17411	*	8	408.40119	*	6	408.40810	*	7
408.17412	*	8	408.40121	*	6	408.40818	*	7
408.17415	*	8	408.40122	*	6	408.40819	*	7
408.17421	*	8	408.40127	*	6	408.40820	*	7
408.17422	*	8	408.40128	*	6	408.40821	*	7
408.17423	*	8	408.40130	*	6	408.40822	*	7
408.17424	*	8	408.40131	*	6	408.40831	*	7
408.17426	*	8	408.40132	*	6	408.40833	*	7
408.17431	*	8	408.40133	*	6	408.40834	*	7
408.17432	*	8	408.40134	*	6	408.40836	*	7
408.17433	*	8	408.40133	R	6	408.40837	*	7
408.17434	*	8	408.40125	R	6	408.40840	*	7
408.17435	*	8	408.40126	R	6	408.40841	*	7
408.17436	*	8	408.40617	*	6	408.40932	*	6
408.17437	*	8	408.40621	*	6	408.40933	*	6
408.17451	*	8	408.40622	*	6	408.40941	*	6
408.17461	*	8	408.40623	*	6	408.40851	*	6
408.17463	*	8	408.40624	*	6	408.40946	R	6
408.30001	*	6	408.40625	*	6	408.40952	R	6
408.30007	*	6	408.40626	*	6	408.41111	*	7

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408.41122	*	7	408.41246	R	7	408.41953	*	7
408.41123	*	7	408.41262	R	7	408.41954	*	7
408.41124	*	7	408.41263	R	7	408.41957	*	7
408.41126	*	7	408.41410	*	8	408.41959	*	7
408.41132	*	7	408.41462	*	8	408.41964	*	7
408.41133	*	7	408.41464	*	8	408.41977	*	7
408.41140	*	7	408.41465	*	8	408.41980	*	7
408.41102	R	7	408.41466	*	8	408.41902	A	7
408.41115	R	7	408.41467	*	8	408.41931	R	7
408.41125	R	7	408.41472	*	8	408.41956	R	7
408.41130	R	7	408.41475	*	8	408.41970	R	7
408.41131	R	7	408.41476	*	8	408.41971	R	7
408.41210	*	7	408.41477	*	8	408.41974	R	7
408.41211	*	7	408.41478	*	8	408.41975	R	7
408.41215	*	7	408.41482	*	8	408.41979	R	7
408.41217	*	7	408.41075a	A	8	408.42031	*	6
408.41221	*	7	408.41077a	A	8	408.42034	*	6
408.41222	*	7	408.41468	R	8	408.42041	*	6
408.41224	*	7	408.41610	*	1	408.42043	*	6
408.41225	*	7	408.41627	*	1	408.42045	*	6
408.41226	*	7	408.41633	*	1	408.42046	*	6
408.41227	*	7	408.41658	*	1	408. 42047	*	6
408.41231	*	7	408.41719	*	1	408.42131	R	1
408.41232	*	7	408.41725	*	1	408.42145	R	1
408.41233	*	7	408.41728	*	1	408.42149	*	1
408.41234	*	7	408.41802	*	7	408.42156	*	1
408.41235	*	7	408.41841	*	7	408.42157	*	1
408.41236	*	7	408.41852	*	7	408.42159	*	1
408.41237	*	7	408.41872	*	7	408.42160	R	1
408.41243	*	7	408.41884	*	7	408.42209	*	8
408.41245	*	7	408.41842	R	7	408.42213	*	8
408.41253	*	7	408.41850	R	7	408.42223	*	8
408.41254	*	7	408.41932	*	7	408.42225	*	8
408.41255	*	7	408.41934	*	7	408.42238	*	8
408.41256	*	7	408.41935	*	7	408.42402	*	1
408.41261	*	7	408.41943	*	7	408.42403	*	1
408.41264	*	7	408.41945	*	7	408.42404	*	1
408.41228	R	7	408.41949	*	7	408.42405	*	1
408.41244	R	7	408.41952	*	7	408.42406	*	1

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

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408.42407	*	1	408.43122	R	7	484.87	*	8
408.42502	*	1	408.43123	R	7	484.88	*	8
408.42503	*	1	408.43124	R	7	484.89	*	8
408.42518	*	1	408.43125	R	7	484.90	*	8
408.42520	*	1	408.43126	R	7	491.101	R	3
408.42521	*	1	408.43127	R	7	491.110	R	3
408.42522	*	1	408.43131	R	7	491.115	R	3
408.42524	*	1	408.43132	R	7	491.120	R	3
408.42525	*	1	408.43133	R	7	491.125	R	3
408.42526	*	1	408.43134	R	7	491.130	R	3
408.42527	*	1	408.43141	R	7	491.135	R	3
408.42528	*	1	408.43142	R	7	491.140	R	3
408.42531	*	1	408.43145	R	7	491.145	R	3
408.42532	*	1	408.43146	R	7	491.150	R	3
408.42533	*	1	408.43151	R	7	491.155	R	3
408.42534	R	1	408.43152	R	7	491.160	R	3
408.42535	R	1	408.43153	R	7	491.165	R	3
408.42602	*	1	408.43154	R	7	491.170	R	3
408.42644	*	1	408.43155	R	7	491.175	R	3
408.42732	*	7	408.43156	R	7	491.180	R	3
408.42733	*	7	408.43157	R	7	491.185	R	3
408.42741	*	7	408.43158	R	7	491.190	R	3
408.42743	*	7	408.43161	R	7	491.195	R	3
408.42755	*	7	408.43162	R	7	491.197	R	3
408.42759	*	7	408.43204a	*	8	550.402	A	6
408.42799	*	7	408.43207	*	8	550.403	A	6
408.42756	R	7	408.43212	*	8	550.404	A	6
408.43101	R	7	436.1335	R	5	554.701	*	9
408.43103	R	7	484.71	*	6	554.723	*	9
408.43104	R	7	484.72	*	6	554.731	*	9
408.43105	R	7	484.73	*	6	554.733	*	9
408.43106	R	7	484.74	*	6	554.734	*	9
408.43107	R	7	484.75	*	6	554.736	*	9
408.43109	R	7	484.81	*	8	554.737	*	9
408.43111	R	7	484.82	*	8	554.741	*	9
408.43112	R	7	484.83	*	8	554.742	*	9
408.43113	R	7	484.84	*	8	554.743	*	9
408.43114	R	7	484.85	*	8	554.744	*	9
408.43121	R	7	484.86	*	8	554.746	*	9

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554.721	R	9	792.10271	A	6
554.722	R	9	792.10273	A	6
554.747	R	9	792.10275	A	6
554.750	A	9	792.10277	A	6
554.751	A	9	792.10279	A	6
792.10201	A	6	792.10281	A	6
792.10203	A	6	792.10283	A	6
792.10205	A	6	792.10285	A	6
792.10207	A	6	792.10287	A	6
792.10209	A	6	792.10289	A	6
792.10211	A	6			
792.10213	A	6			
792.10215	A	6			
792.10217	A	6			
792.10219	A	6			
792.10221	A	6			
792.10223	A	6			
792.10225	A	6			
792.10227	A	6			
792.10229	A	6			
792.10231	A	6			
792.10233	A	6			
792.10237	A	6			
792.10239	A	6			
792.10241	A	6			
792.10243	A	6			
792.10245	A	6			
792.10247	A	6			
792.10249	A	6			
792.10251	A	6			
792.10253	A	6			
792.10255	A	6			
792.10257	A	6			
792.10259	A	6			
792.10261	A	6			
792.10263	A	6			
792.10265	A	6			
792.10267	A	6			
792.10269	A	6			

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SIGNED INTO LAW OR VETOED
(2012 SESSION)

Mich. Const. Art. IV, §33 provides: "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated."

Mich. Const. Art. IV, §27, further provides: "No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year."

2013 Michigan Public Acts Table

Legislative Service Bureau
Legal Division, Statutory Compiling and Law Publications Unit
124 W. Allegan, Lansing, MI 48909

May 15, 2013

Through PA 28 of 2013

PA No.	ENROLLED HB	ENROLLED SB	I.E.* Yes/No	Governor Approved	Filed Date	Effective Date		SUBJECT
1	4153		Yes	3/12	3/12	3/12/13		***Sales tax**; collections*; retroactive effective date for regulations on prepaid sales tax on gasoline; provide for. ***(Rep. M. Shirkey)***
2		044	Yes	3/12	3/12	6/1/13		***Criminal procedure**; sex offender registration*; placement on the public registry; remove certain exceptions. ***(Sen. R. Jones)***
3		060	Yes	3/12	3/12	3/12/13		***Weapons**; licensing*; definition of federally licensed firearms dealer; modify. ***(Sen. M. Green)***
4		061	Yes	3/18	3/18	3/18/13	#	***Insurance**; health care corporations*; merger of health care corporation with a nonprofit mutual disability insurer; allow, and provide procedures, prescribe requirements on rating and certain contract provisions, and establish requirements for a health endowment fund corporation. ***(Sen. J. Hune)***
5		062	Yes	3/18	3/18	3/18/13	#	***Insurance**; health*; regulations applicable to nonprofit mutual disability insurer; revise to accommodate merger with nonprofit health care corporation and prescribe requirements on rating and certain contract provisions. ***(Sen. V. Smith)***
6		0234	Yes	3/20	3/20	3/20/13	#	***Vehicles**; fund-raising registration plates*; fund-raising plate for ducks unlimited; provide for. ***(Sen. R. Richardville)***
7	4337		Yes	3/20	3/20	3/20/13	#	***Vehicles**; fund-raising registration plates*; distribution of proceeds from sales of ducks unlimited fund-raising plates; provide for. ***(Rep. D. Zorn)***
8		048	Yes	3/26	3/26	3/26/13		***Animals**; other*; exemption from large carnivore act for certain businesses; expand to exempt businesses that allow patrons to come into contact with bears less than 36 weeks of age or bears that weigh 90 pounds or less and make other general revisions. ***(Sen. T. Casperson)***

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after sine die adjournment of the Legislature.
*** - See Act for applicable effective date.
\+ - Line item veto.
++ - Pocket veto.
\# - Tie bar.

2013 Michigan Public Acts Table

PA No.	ENROLLED HB	ENROLLED SB	I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
9		0233	Yes	3/27	3/27	3/27/13	***Appropriations**; supplemental*; various state departments and agencies; provide appropriations. ***(Sen. D. Booher)***
10		0252	Yes	3/27	3/27	3/27/13	***Watercraft**; marinas*; marina dredging loan origination program; establish. ***(Sen. J. Brandenburg)***
11	4398		Yes	3/27	3/27	3/27/13	***Watercraft**; marinas*; dredging material from Great Lakes bottomlands determined to be largely sand; revise permit fee. ***(Rep. A. Price)***
12	4399		Yes	3/27	3/27	3/27/13	***Natural resources**; Great Lakes*; expedited conditional permit process; allow for emergencies. ***(Rep. A. Pscholka)***
13	4400		Yes	3/27	3/27	3/27/13	***Watercraft**; marinas*; dredging material from inland lakes and streams determined to be largely sand; revise fee. ***(Rep. P. Pettalia)***
14		019	Yes	4/16	4/16	4/16/13	***Financial institutions**; mortgage brokers and lenders*; appointments to the mortgage industry advisory board; modify. ***(Sen. D. Booher)***
15		065	Yes	4/16	4/16	4/16/13	***Individual income tax**; collections*; withholding requirement for certain members of a flow-through entity; clarify. ***(Sen. J. Brandenburg)***
16	4052		Yes	4/23	4/23	4/23/13 #	***Trade**; vehicles*; motor vehicle sales finance act; expand to include certain nonmotorized recreational vehicles. ***(Rep. K. Kurtz)***
17	4053		Yes	4/23	4/23	4/23/13 #	***Trade**; vehicles*; application of retail installment sales act; exclude certain nonmotorized recreational vehicles. ***(Rep. K. Kurtz)***
18	4045		Yes	4/23	4/23	4/23/13	***Occupations**; electricians*; eligible apprenticeship training programs; revise requirements for fire alarm specialty technicians. ***(Rep. H. Crawford)***

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19	4123		Yes	4/23	4/23	7/1/13	***Torts**; liability*; personal injury or property damage caused by propane gas equipment or appliances; provide protection from liability. ***(Rep. R. Victory)***
20		0108	Yes	5/7	5/7	5/7/13	***Highways**; name*; portion of I-94 in Kalamazoo county; designate as the "Officer Eric Zapata Memorial Highway". ***(Sen. T. Schuitmaker)***
21		0288	Yes	5/8	5/8	5/8/13	***Natural resources**; hunting*; natural resources commission ability to designate species as game; provide for. ***(Sen. T. Casperson)***
22		0289	Yes	5/8	5/8	5/8/13	***Natural resources**; hunting*; right to hunt and fish; provide for. ***(Sen. T. Casperson)***
23	4093		Yes	5/9	5/9	5/9/13 #	***Crimes**; intoxication or impairment*; alcohol content for individuals operating a vehicle under the influence of alcoholic liquor; maintain at 0.08 without reversion to 0.10. ***(Rep. A. LaFontaine)***
24	4131		Yes	5/9	5/9	5/9/13 #	***Criminal procedure**; sentencing guidelines*; alcohol content for individuals operating a motor vehicle under the influence of alcoholic liquor in the code of criminal procedure; maintain at 0.08 without reversion to 0.10. ***(Rep. K. Kesto)***
25		0218	Yes	5/9	5/10	8/9/13	***Economic development**; tax increment financing*; sunset on water resource improvement tax increment finance authority; remove, and allow dredging. ***(Sen. G. Hansen)***
26		0123	Yes	5/9	5/10	5/10/13	***State financing and management**; funds*; funding for purchase of land and development of certain convention facilities; provide for. ***(Sen. D. Hildenbrand)***
27	4037		No	5/14	5/14	5/1/14	***Traffic control**; driver license*; designation of veteran status on driver license; provide for, and allow secretary of state to report certain veteran information to certain other departments and agencies. ***(Rep. N. Jenkins)***
28		0219	No	5/14	5/14	5/1/14	***State**; identification cards*; veteran designation on state identification cards; allow. ***(Sen. D. Booher)***

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